

## I. The Philippine Constitution

### A. Constitution: definition, nature and concepts

Constitution is defined by Cooley as:

- a. a body of statutory, administrative and political provisions by which the three branches of government are defined;
- b. a body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised;
- c. a body of rules and edicts emanating from the rulings of courts and written guidelines of the executive and the legislature by which government is governed;
- d. a body of interpretations and rules by which the three branches of government are judged for purposes of sovereign compliance with good corporate governance.

SUGGESTED ANSWER:

- b. Cooley, Constitutional Limitations, p. 4 (2012)

### **2014 BAR EXAMS**

In *Serrano v. Gallant Maritime Services, Inc.*, 582 SCRA 254 (2009), the Supreme Court declared as violative of the Equal Protection Clause the 5th paragraph of §10 R.A. No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995) for discriminating against illegally dismissed OFWs who still had more than a year to their contract compared to those who only had less than a year remaining. The next year, Congress enacted R.A. No 10222, an amendment to the Migrant Workers and Overseas Filipinos Act, which practically reinstated the provision struck down in *Serrano*.

Seamacho, an overseas seafarer who still had two years remaining on his contract when he was illegally terminated, and who would only be entitled to a maximum of six-month's pay under the reinstated provision, engages you as his counsel. How are you to argue that the new law is invalid insofar as it brings back to the statute books a provision that has already been struck down by the Court? (5%).

### **SUGGESTED ANSWER:**

I will argue that since Section 10 of Republic Act No. 8042 has already been declared unconstitutional by the Supreme Court, its nullity cannot be cured by reincorporation or reenactment of the same or a similar law or provision. Once a law has been declared unconstitutional, it remains unconstitutional unless circumstances have so changed as to warrant a reverse conclusion (Sameer Overseas Placement Agency v. Cabiles, G.R. No. 170139, August 5, 2014).

### **2012 BAR EXAMS**

Congressman Sugar Oll authored a bill called House Bill No, 0056 which legalizes jueteng. When the Bill became law (RA 10156), Fr. Nosu Gal, a priest, filed a petition seeking for the nullification of RA 10156 on the ground that it is unconstitutional as it violates Section 13, Article II, of the 1987 Constitution which states that "The state recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being". Fr. Gal filed the petition as a concerned citizen and as taxpayer. Does Fr. Gal have locus standi?

**a. No, because Fr. Gal has no personal and substantial interest that will be prejudiced by the implementation of the law;**

b. No, the law concerns neither citizens nor expenditure of public funds;

c. Yes, because the issue is of transcendental importance;

d. Yes, because as priest, Fr. Gal has special interest in the well-being of the youth.

### **SUGGESTED ANSWER:**

(A) Basco Vs. Philippine Amusements And Gaming Representatives, 415 Scra 44.

It Is Suggested That Either (A) Or (C) May Be Accepted As A Correct Answer

### **B. Parts**

The three essential parts of a Constitution are:

a. the bill of rights, governmental organization and functions, and method of amendment;

- b. the preamble, the bill of rights, and provisions on checks and balances;
- c. the national territory, the declaration of principles and state policies, and the transitory provisions;
- d. the executive department, the legislative department and the judiciary.

**SUGGESTED ANSWER:**

- A. Nachura, Outline review in political Law, p, 3 (2012)

**C. Amendments and revisions**

The constitutional provision on initiative and referendum is not self-executory. This is so because it requires:

- a. an implementing resolution from the COMELEC;
- b. an implementing resolution from the Supreme Court;
- c. an implementing legislation;
- d. an implementing resolution from the party-list representative of the House of Representatives.

**SUGGESTED ANSWER:**

**C. SECTION 32, ARTICLE IV OF CONSTITUTION (2012)**

In an amendment to the constitution by "initiative and referendum", the "initiative" phase is meant that the people propose the amendments. There is a valid proposal when a proposition has received the approval of:

- a. at least 3% of the persons of majority age of each district, and 12% of the registered voters of the region from proposal emanates;
- b. at least 3% of the registered voters of each province and 12% of the total number of registered voters nationwide;
- c. at least 3% of the registered voters of each district and 12% of the total number of registered voters nationwide;

- d. more than 3% of the 3% of the registered voters of each district but less than 12% of the total number of registered voters nationwide.

SUGGESTED ANSWER:

B. SECTION 2, ARTICLE XVII OF CONSTITUTION (2012)

With the passage of time, the members of the House of Representatives increased with the creation of new legislative districts and the corresponding adjustments in the number of party-list representatives. At a time when the House membership was already 290, a great number of the members decided that it was time to propose amendments to the Constitution. The Senators, however, were cool to the idea. But the members of the House insisted. They accordingly convened Congress into a constituent assembly in spite of the opposition of the majority of the members of the Senate. When the votes were counted, 275 members of the House of Representatives approved the proposed amendments. Only 10 Senators supported such proposals. The proponents now claim that the proposals were validly made, since more than the required three-fourths vote of Congress has been obtained. The 14 Senators who voted against the proposals claim that the proposals needed not three-fourths vote of the entire Congress but each house. Since the required number of votes in the Senate was not obtained, then there could be no valid proposals, so argued the Senators. Were the proposals validly adopted by Congress? (5%)

SUGGESTED ANSWER:

The proposal were not validly adopted, because the ten (10) Senators who voted in favor of the proposed amendments constituted less than three-fourths of all the Members of the Senate. Although Section 1, Article XVII of the Constitution did not expressly provide that the Senate and the House of Representatives must vote separately, when the Legislature consist of two (2) houses, the determination of one house is to be submitted to the separate determination of the other house iller v. Mardo, 2 SCRA 898 [1961]. (2014)

Constituent power refers to the authority (1%)

(A) of public officials to command respect

(B) given to Congress to enact police power measures

**(C) to propose constitutional amendments or revisions**

(D) of the people to take back the power entrusted to those in government

(E) of the President to call out the armed forces to suppress lawless violence (2014)

**D. Self-executing and non-self-executing provisions**

Which one of the following is a non-self-executing provision of the Constitution:

- a. no law shall be passed abridging the freedom of speech;
- b. no law shall be made respecting an establishment of religion;
- c. no person shall be held to answer for a criminal offense without due process of law;
- d. **the state shall encourage and support researches and studies on the arts and culture.**

SUGGESTED ANSWER:

D. SECTION 15, ARTICLE XIV OF CONSTITUTION (2012)

**E. General provisions**

**II. General Considerations**

**A. National territory**

**1. Archipelagic doctrine**

(1) A bill was introduced in the House of Representatives in order to implement faithfully the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) to which the Philippines is a signatory. Congressman Pat Rio Tek questioned the constitutionality of the bill on the ground that the provisions of UNCLOS are violative of the provisions of the Constitution defining the Philippine internal waters and territorial sea. Do you agree or not with the said objection? Explain. (3%)

(2) Describe the following maritime regimes under UNCLOS (4%)

- (a) Territorial sea
- (b) Contiguous zone
- (c) Exclusive economic zone
- (d) Continental shelf

**ANSWER:**

(1) I do not agree.

“The UNCLOS is a product of international negotiation that seeks to balance State sovereignty (mare clausum) and the principle of freedom of the high seas (mare liberum) . The freedom to use the world’s marine waters is one of the oldest customary principles of international law. The UNCLOS gives to the coastal State sovereign rights in varying degrees over the different zones of the sea which are: 1) internal waters, 2) territorial sea, 3) contiguous zone, 4) exclusive economic zone, and 5) the high seas. It also gives coastal States more or less jurisdiction over foreign vessels depending on where the vessel is located. Insofar as the internal waters and territorial sea is concerned, the Coastal State exercises sovereignty, subject to the UNCLOS and other rules of international law. Such sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.” (Arigo v. Swift, G.R. No. 206510, September 16, 2014)

UNCLOS III does not define the internal and territorial waters of states but merely “prescribes the water-land ration, length and contour of baselines of archipelagic States like the Philippines.”

“UNCLOS III has nothing to do with the acquisition (or loss) of territory,” It is a multilateral treaty regulating, among others, sea-use rights over maritime zones (i.e., the territorial waters [12 nautical miles from the baselines], exclusive economic zone [200 nautical miles from the baselines]), and continental shelves that UNCLOS III delimits.”

“UNCLOS III and its ancillary baselines laws play no role in the acquisition, enlargement or, as petitioners claim, diminution of territory. Under traditional international law typology, States acquire (or conversely, lose) territory through occupation, accretion, cession and prescription, not by executing multilateral treaties on the regulations of sea-use rights or enacting statutes to comply with the treaty’s terms to delimit maritime zones and continental shelves. Territorial claims to land features are outside UNCLOS III, and are instead governed by the rules on general international law.” (Magallona v. Ermita, G.R. No. 187167, August 16, 2011, 655 SCRA 476)

(2) Under the provisions of UNCLOS III-

(a) The territorial waters of an archipelagic state shall extend up to 12 nautical miles from its baselines;

(b) Its contiguous zone shall extend up to 24 nautical miles from its baselines;

(c) Its exclusive economic zone shall extend up to 200 nautical miles from its baselines; (Magallona v. Ermita, G.R. No. 187167, August 16, 20-11, 655 SCRA 476) while

(d) Its continental shelf “comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.” (UNCLOS III, Article 77)

(2013) Congress passed Republic Act No. 7711 to comply with the United Nations Convention on the Law of the Sea.

In a petition filed with the Supreme Court, Anak Ti Ilocos, an association of Ilocano professionals, argued that Republic Act No. 7711 discarded the definition of the Philippine territory under the Treaty of Paris and in related treaties; excluded the Kalayaan Islands and the Scarborough Shoals from the Philippine Archipelagic baselines; and converted internal waters into archipelagic waters.

Is the petition meritorious? (6%)

**SUGGESTED ANSWER:**

No, the petition is not meritorious. The United Nations Convention on the Law of the Sea has nothing to do with the acquisition or loss of territory. It merely regulates sea-use rights over maritime zones, contiguous zones, exclusive economic zones, and continental shelves which it delimits. The Kalayaan Islands and the Scarborough Shoals are located at an appreciable distance from the nearest shoreline of the Philippines= archipelago. A straight baseline loped around them from the nearest baseline will violate Article 47(3) and Article 47(2) of the United Nations Convention on the Law of the Sea III. Whether the bodies of water lying landward of the baselines of the Philippines are internal waters or archipelagic waters, the Philippines retains jurisdiction over them (Magallona v. Ermita, G.R. No. 187167, July 16, 2011, 655 SCRA 476).

**B. State immunity**

(2013) The Ambassador of the Republic of Kafirista referred to you for handling, the case of the Embassy’s Maintenance Agreement with CBM, a private domestic company engaged in maintenance work. The Agreement binds CBM, for a defined fee, to maintain the Embassy’s elevators, air-conditioning units and electrical facilities. Section 10 of the Agreement provides that the Agreement shall be governed by Philippine laws and that any legal action shall be brought

before the proper court of Makati. Kafiristan terminated the Agreement because CBM allegedly did not comply with their agreed maintenance standards.

CBM contested the termination and filed a complaint against Kafiristan before the Regional Trial Court of Makati. The Ambassador wants you to file a motion to dismiss on the ground of state immunity from suit and to oppose the position that under Section 10 of the Agreement, Kafiristan expressly waives its immunity from suit.

Under these facts, can the Embassy successfully invoke immunity from suit? (6%)

**SUGGESTED ANSWER:**

Yes, the Embassy can invoke immunity from suit. Section 10 of the Maintenance Agreement is not necessarily a waiver of sovereign immunity from suit. It was meant to apply in case the Republic of Kafiristan elects to sue in the local courts or waives its immunity by a subsequent act. The establishment of a diplomatic mission is a sovereign function. This encompasses its maintenance and upkeep. The Maintenance Agreement was in pursuit of a sovereign activity (republic of the Indonesia v. Vinzon, G.R. No. 154705, June 26, 2003, 405 SCRA 126).

(2013) In the last quarter of 2012, about 5,000 container vans of imported goods intended for the Christmas Season were seized by agents of the Bureau of Customs. The imported goods were released only on January 10, 2013. A group of importers got together and filed an action for damages before the Regional Trial Court of Manila against the Department of Finance and Bureau of Customs.

The Bureau of Customs raised the defense of immunity from suit and, alternatively, that liability should lie with XYZ Corp. which the Bureau had contracted for the lease of ten (10) high powered van cranes but delivered only five (5) of these cranes, thus causing the delay in its cargo-handling operations. It appears that the Bureau, despite demand, did not pay XYZ Corp. the Php 1.0 Million deposit and advance rental required under their contract.

**(A)** Will the action by the group of importers prosper? (5%)

**SUGGESTED ANSWER:**

(A) No. The action by the group of importers will not prosper. The primary function of the Bureau of Customs is governmental, y=that of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines and penalties (Mobil Philippines Exploration, Inc. v. Customs Arrastre Service, 18 SCRA 120)

**(B)** Can XYZ Corp. sue the Bureau of Customs to collect rentals for the delivered cranes? (5%)

**SUGGESTED ANSWER:**

(B ) No. XYZ Corporation cannot sue the Bureau of Customs to collect rentals for the delivered cranes, The contract was a necessary incident to the performance of its governmental function. To properly collect the revenues and customs duties, the Bureau of Customs must check to determine if the declaration of the importers tallies with the landed merchandise. The cranes are needed to haul the landed merchandise to a suitable place for inspection. (Mobil Philippines Exploration v. Customs Arrastre Service, 18 SCRA 1120).

**ALTERNATIVE ANSWER:**

No, XYZ Corporation cannot sue the Bureau of Customs because it has no juridical personality separate from that of the Republic of the Philippines (Mobil Philippines Exploration v. Customs Arrastre Service, 18 SCRA 1120).

**ANOTHER ALTERNATIVE ANSWER:**

Yes, XYZ Corporation may sue the Bureau of Customs because the contact is connected with a propriety function, the operation of the arrastre service (Philippine Refining Company v. Court of Appeals, 256 SCRA 667). Besides, XYZ Corporation leased its van cranes, because the Bureau of Customs undertook to pay its rentals. Justice and equity demand that the bureau of Customs should not be allowed to invoke state immunity from suit (Republic v. Unimex-Micro Electronics GmbH, 518 SCRA 19).

(2013)Mr. Sinco Sued the government for damages. After trial, the court ruled in his favor and awarded damages amounting to P50 million against the government. To satisfy the judgment against the government, which valid option is available to Mr. Sinco? (1%)

(A) Garnish the government funds deposited at the Land Bank.

**(B) File a claim with the Commission on Audit (COA) pursuant to Commonwealth Act 327, as amended by Presidential Decree 1445.**

(C) Make representations with the Congress to appropriated the amount to satisfy the judgment.

(D) File a petition for mandamus in court to compel Congress to appropriate P50 million to satisfy the judgment.

(E) Proceed to execute the judgment as provided by the Rules of Court because the State allowed itself to be sued.

**SUGGESTED ANSWER:**

(B)(University of the Philippines v. Dizon, G.R. No. 171182, August 23, 2012, 679 SCRA 54).

(2013) The separation of Church and State is most clearly violated when \_\_\_\_\_ . (1%)

(A) the State funds a road project whose effect is to make a church more accessible to its adherents

(B) the state declares the birthplace of a founder of a religious sect as a national historical site

(C) the State expropriates church property in order to construct an expressway that, among others, provides easy access to the Church's main cathedral

(D) the State gives vehicles to bishops to assist the in church-related charitable projects

**(E) the State allows prayers in schools for minor children without securing the prior consent of their parents.**

**SUGGESTED ANSWER:**

(E) the state allows prayers in schools for minor children without securing the prior consent of their parents.

**ALTERNATIVE ANSWER:** (D)

## **2012 BAR EXAMS**

In *Oposa vs. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, the Supreme Court held that the personality of the petitioners to sue is based on the concept of:

a. ecological responsibility;

b. environmental accountability;

**c. intergenerational responsibility;**

d. interdisciplinary responsibility.

**SUGGESTED ANSWER:**

(c) *Oposa Vs. Factoran*, 224 Scra 792

## **2012 BAR EXAMS**

In a unitary system of government, such as the government under the Philippine Constitutor, local government can only be:

a. an imperuim in imperio;

**b. an infa-sovereign subdivision;**

c. a sovereign nation;

d. a sovereign entity.

**SUGGESTED ANSWER:**

(b) Magtajas Vs. Pryce Properties Corporation, 234 Scra 255

**2012 BAR EXAMS**

A tax is progressive when:

- a. the rate fluctuates as the tax base decreases;
- b. the rate increases as the tax base remains the same;
- c. the rate increases as the tax base increases;**
- d. the rate decreases as the tax base increases.

**(C) REYES VS. ALMANZOR, 196 SCRA 327**

**C. Separation of powers**

**2012 BAR EXAMS**

Which phrase best completes the statement – The starting point of the principle of separation of powers is the assumption of the division of the functions of government into three distinct classes:

- a. the bill of rights, state policies, and social justice and human rights;
- b. the accountability of public officers, the constitutional commissions, and the national economy and patrimony;
- c. the self-executing provisions, the non-self-executing provisions, and the self-evident social justice provisions;
- d. the executive, the legislative, and the judicial.**

**SUGGESTED ANSWER**

**D. CRUZ, PHILIPPINE POLITICAL LAW, 2005 ED., P.70**

**2015 BAR EXAMS**

Senator Fleur De Lis is charged with plunder before the Sandiganbayan. After finding the existence of probable cause, the court issues a warrant for the Senator's arrest. The prosecution files a motion to suspend the Senator relying on Section 5 of the Plunder Law. According to the prosecution, the suspension should last until the termination of the case. Senator Lis vigorously opposes the motion contending that only the Senate can discipline its members; and that to allow his suspension by the Court would violate the principle of separation of powers. Is Senator Lis's contention tenable? Explain. (4%)

**ANSWER:**

The Senators contention is untenable or "unavailing." He can be validly preventively suspended under the Plunder Law.

The power of each House of Congress to "punish its Members for disorderly behavior," and "suspend or expel a Member" by a vote of two-thirds of all its Members subject to the qualification that the penalty of suspension, when imposed, should not exceed sixty days" under Section 6 (3). Article VI of the Constitution is "distinct" from the suspension under the Plunder Law, "which is not a penalty but a preliminary, preventive measure, prescinding from the fact that the latter is not being imposed on petitioner for misbehavior as a Member of the House of Representatives." (Ceferino Paredes, Jr. vs. Sandiganbayan, et al., G.R. No. 118364, 08 August 1995, cited in Santiago v. Sandiganbayan, G.R. No. 128055, April 18, 2001)

**D. Checks and balances**

**2012 BAR EXAMS**

Which of the following best exemplifies how the system of checks and balances is carried out:

- a. **the legislature passes a law that prohibits the president from commuting a judiciary imposed sentence, as a check of the president;**
- b. the President pardons a convict as a way to set aside or modify a judgment of the judiciary;
- c. the judiciary overturns a pardon granted by the President as a check on executions;
- d. the President pardons an accused after arraignment in the interest of justice.

**SUGGESTED ANSWER**

A. Section 19, Article VII of Constitution

E. Delegation of powers

### 2012 BAR EXAMS

Which one of the following theories does not support the valid delegation of authority by the Congress to an administrative agency:

- a. an administrative agency may "fill up the details" of a statute;
- b. the legislature may leave to another body the ascertainment of facts necessary to bring the law into actual operation;
- c. an administrative agency has equal expertise with the legislature in crafting and implementing laws;
- d. **contingent legislation.**

### SUGGESTED ANSWER:

D. UNITED BF HOMEOWNERS ASSOCIATION VS BF HOMES INC. 310 SCRA 304

F. Forms of government

### 2012 BAR EXAMS

The Constitution declares that the Philippines is a republican state. Republicanism means:

- a. the form of government must be presidential;
- b. the representatives of the government are elected by the people;
- c. **sovereignty resides in the elected representatives of the government;**
- d. the form of government cannot be changed by the people.

### Suggested answer:

E. CRUZ PHILIPPINE POLITICAL LAW, 2005 ED., P, 50

### 2012 BAR EXAMS

A chief characteristic of the presidential form of government is:

- a. concentration of power in the judiciary thru the power of expanded judicial review;
- b. supremacy of the presidency compared to the totality of powers of the legislative;**
- c. regular periodic election of the President for a fixed term;
- d. unlimited term for the President for as long as elected by the people in free and honest elections.

**Answer: (B)** Free Telephone Workers Union vs. Minister of Labor and Employment; 108 scra 757; and (c) section 4, article vii of constitution.

It is suggested that either (b) or (c) may be accepted as a correct answer

### III. Legislative Department

#### A. Who may exercise legislative power

##### 1. Congress

### 2012 BAR EXAMS

Identify which one is an invalid exercise of the legislative power:

- a. legislation by local government on purely local matters;
- b. law granting an administrative agency the power to define policy and fix standards on price control;
- c. law authorizing the President, in times of war or other national emergency, for a limited period, subject to prescribed restrictions, to exercise powers necessary and proper to carry out a declared national policy;**
- d. law authorizing the President to fix, within specific limits, tariff rates, import and export quotas, and other duties, within the framework of the national development program of the government.

### SUGGESTED ANSWER:

- C. UNITED STATE VS. ANG TANG HO, 43 PHIL 1

### 2012 BAR EXAMS

Which of the following can be changed by an ordinary law enacted by Congress?

- a. **Commencement of the term of office of Senators;**
- b. Date of regular election for President and Vice Presidential;
- c. Authority to transfer appropriation;
- d. Regular election of the members of Congress.

**SUGGESTED ANSWER**

A. SECTION 4, ARTICLE VI OF CONSTITUTION; SECTION 4, ARTICLE VII OF CONSTITUTION; (D) SECTION 8, ARTICLE VI OF CONSTITUTION

**2012 BAR EXAMS**

Congress shall have the sole power to declare the existence of a state of war by vote of:

- a. three-fourths of both Houses in joint session assembled, voting jointly;
- b. two-thirds of both Houses in joint session assembled, voting jointly;
- c. two-thirds of both Houses in separate session assembled, voting jointly;
- d. two-thirds of both Houses in joint session, voting separately.**

**SUGGESTED ANSWER:**

(D) SECTION 23(2) ARTICLE VI OF CONSTITUTION

- 2. Regional/Local legislative power
- 3. People's initiative on statutes
  - a) Initiative and referendum

**2014 BAR EXAMS**

Several citizens, unhappy with the proliferation of families dominating the political landscape, decided to take matters into their own hands. They proposed to come up with a people's initiative defining political dynasties. They started a signature campaign for the purpose of coming up with a petition for that purpose. Some others expressed misgivings about a people's initiative for the purpose of proposing amendments to the Constitution, however. They cited the Court's decision in Santiago v. Commission on Elections, 270 SCRA 106 (1997), as authority for their position that there

is yet no enabling law for such purpose. On the other hand, there are also those who claim that the individual votes of the justices in *Lambino v. Commission on Elections*, 505 SCRA 160 (2006), mean that Santiago's pronouncement has effectively been abandoned. If you were consulted by those behind the new attempt at a people's initiative, how would you advise them? (4%)

**SUGGESTED ANSWER:**

I shall advise those starting a people's initiative that initiative to pass a law defining political dynasties may proceed as their proposal is to enact a law only and not to amend the constitution. The decision in *Santiago v. Commission on Elections*, 270 SCRA 106 [1997], which has not been reversed, upheld the adequacy of the provisions in Republic Act 6735 on initiative to enact a law.

**ALTERNATIVE ANSWER:**

I shall advise those starting a people's initiative that the ruling in *Santiago vs. Commission on Election* that there is as yet no enabling law for an initiative has not been reversed. According to Section 4(3), Article VIII of the Constitution, a doctrine of law laid down in a decision rendered by the Supreme Court en banc may not be reversed except if it is acting en banc. The majority opinion in *Lambino v. Commission on Elections* (505 SCRA 160 [2006]), refused to re-examine the ruling in *Santiago v. Commission on Elections* (270 SCRA 106 [1997]), because it was not necessary for deciding the case. The Justices who voted to reverse the ruling constituted the minority.

4. The President under a martial law rule or in a revolutionary government
- B. Houses of Congress
  1. Senate

**2014 BAR EXAMS**

A few months before the end of the present Congress, Strongwill was invited by the Senate to shed light in an inquiry relative to the alleged siphoning and diverting of the pork barrel of members of Congress to non-existent or fictitious projects. Strongwill has been identified in the news as the principal actor responsible for the scandal, the leader of a non-governmental organization which ostensibly funnelled the funds to certain local government projects which existed only on paper. At the start of the hearings before the Senate, Strongwill refused at once to cooperate. The Senate cited him in contempt and sent him to jail until he would have seen the light. The Congress, thereafter, adjourned sine die preparatory to the

assumption to office of the newly-elected members. In the meantime, Strongwill languished behind bars and the remaining senators refused to have him released, claiming that the Senate is a continuing body and, therefore, he can be detained indefinitely. Are the senators right? (4%)

**SUGGESTED ANSWER:**

The Senators are right. The Senate is to be considered as a continuing body of purposes of its exercise of its power punish for contempt. Accordingly, the continuing validity of its orders punishing for contempt should not be affected by its sine die adjournment (*Arnault v. Nazareno*, 87 Phil. 29 (1950)).

**ALTERNATIVE ANSWER:**

The Senators are right. While the Senate as an institution is continuing in the conduct of its day to day business, the Senate of each Congress acts separately from the Senate of the Congress before it. All pending matters terminate upon expiration of each Congress (*Neri v. Senate Committee on Accountability of Public Officers and Investigation*, 564 SCRA 152 (2008)). (2014 BAR EXAMS)

2. House of Representatives

a) District representatives and questions of apportionment

**2012 BAR EXAMS**

The rule in Article VI, Section 5 (3) of the Constitution that "Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory" is a prohibition against:

- a. re-apportionment;
- b. commandeering of votes;
- c. gerrymandering;**
- d. re-districting.

**SUGGESTED ANSWER:**

C. NAVARRO VS. ERMITA, 612 SCRA 131

**2012 BAR EXAMS**

Article VI, Section 5(3) of the Constitution requires that for a city to be entitled to have at least one representative, its population shall be at least:

- a. 250,000;
- b. 150,000;
- c. 100,000;
- d. 175,000.

**SUGGESTED ANSWER:**

- A. SECTION 5(3), ARTICLE VI OF CONSTITUTION

**2014 BAR EXAMS**

Gerrymandering refers to the practice of: (1%)

- (A) **creating or dividing congressional districts in a manner intended to favor a particular party or candidate**
- (B) truancy as applied to Members of Congress
- (C) loafing among members of Congress
- (D) coming up with guessing game when it comes to legislation
- (E) commandeering large chunks of the budget for favored congressional districts

**SUGGESTED ANSWERS:**

- (A) Creating or dividing congressional districts in a manner intended to favor a particular party or candidate

- b) Party-list system

**2014 BAR EXAMS**

Greenpeas is an ideology-based political party fighting for environmental causes. It decided to participate under the party-list system. When the election results came in, it only obtained 1.99 percent of the votes cast under the party-list system. Bluebean, a political observer, claimed that Greenpeas is not entitled to any seat since it failed to obtain at least 2% of the votes. Moreover, since it does not represent any of the marginalized and underrepresented sectors of society, Greenpeas is not entitled to participate under the party-list system. How valid are the observations of Bluebean? (4%)

**SUGGESTED ANSWER:**

The claim of Bluebean that Greenpeas is not entitled to a seat under the party-list-system because it obtained only 1.99 percent of the votes cast under the party-list-system is not correct. Since the provision in Section 5(2). Article VI of the Constitution that the party-list representatives shall constitute twenty percent (20%) of the total number of the members of the House of Representatives is mandatory, after the parties receiving at least two percent (2%) of the total votes case for the party-list system have been allocated one seat, the remaining seats should be allocated among the parties by the proportional percentage of the votes received by each party as against the total party-list votes (Barangay Association for National Advancement and Transparency v. Commission on Elections, 586 SCRA 211 (2009).

The claim of Bluebean that Greenpeas is not entitled to participate in the party-list elections because it does not represent any marginalized and underrepresented sectors of society is not correct. It is enough that its principal advocacy pertains to the special interest of its sector (Atong Panglaum, Inc. v. Commission on Election, 694 SCRA 477 (2013). (2014 BAR EXAMS)

## **2015 BAR EXAMS**

The Partido ng Mapagkakatiwalaang Pilipino (PMP) is a major political party which has participated in every election since the enactment of the 1987 Constitution. It has fielded candidates mostly for legislative district elections. In fact, a number of its members were elected, and are actually serving, in the House of Representatives. In the coming 2016 elections, the PMP leadership intends to join the party-list system. Can PMP join the party-list system without violating the Constitution and Republic Act (R.A.) No. 7941? (4%) %

### **SUGGESTED ANSWER:**

Yes. As for political parties, they may participate in the party-list race by registering under the party-list system and no longer field congressional candidates. These parties, if they field congressional candidates, however, are not barred from participating in the party-list elections; what they need to do is register their sectoral wing or party under the party-list system. This sectoral wing shall be considered an “independent sectoral party” linked to a political party through a coalition. ( Atong Paglaum vs COMELEC, April 2, 2013)

### **C. Legislative privileges, inhibitions and disqualifications**

## **2012 BAR EXAMS**

A Senator or Member of the House of Representatives shall be privileged from arrest while Congress is in session for all offenses punishable by imprisonment of not more than:

- a. life imprisonment;
- b. reclusion perpetua;
- c. six years imprisonment;**
- d. four years imprisonment.

### **SUGGESTED ANSWER:**

C. SECTION 11, ARTICLE VI OF CONSTITUTION

## **2012 BAR EXAMS**

No Senator or member of the House of Representatives may personally appear as counsel before:

- a. any regional court;
- b. any court of justice;**
- c. any inferior court;
- d. any appellate court.

### **SUGGESTED ANSWER:**

B. SECTION 14, ARTICLE VI OF CONSTITUTION

## **2013 BAR EXAMS**

In the May 2013 elections, the Allied Workers' Group of the Philippines (AWGP), representing land-based and sea-based workers in the Philippines and overseas, won in the party list congressional elections. Atty. Abling, a labor lawyer, is its nominee.

As part of the party's advocacy and services, Congressman Abling engages in labor counseling, particularly for local workers with claims against their employers and for those who need representation in

collective bargaining negotiations with employers. When labor cases arise, AWGP enters its appearance in representation of the workers and the Congressman makes it a point to be there to accompany the workers, although a retained counsel also formally enters his appearance and is invariably there. Congressman Abling largely takes a passive role in the proceedings although he occasionally speaks to supplement the retained counsel's statements. It is otherwise in CBA negotiations where he actively participates.

Management lawyers, feeling aggrieved that a congressman should not actively participate before labor tribunals and before employers because of the influence a congressman can wield, filed a disbarment case against the Congressman before the Supreme Court for his violation of the Code of Professional Responsibility and for breach of trust, in relation particularly with the prohibitions on legislators under the Constitution.

Is the cited ground for disbarment meritorious? (6%)

**SUGGESTED ANSWER:**

Being a congressman, Atty. Abling is disqualified under Article Vi, Section 14 of the 1987 Constitution from personally appearing as counsel before quasi-judicial and other administrative bodies handling labor cases constitutes personal appearance before them (Puyat v. De Guzman, G.R. No. L-5122, 1982, 1135 SCRA 33). His involvement in collective bargaining, negotiations also involves practice of law, because he is making use of his legal knowledge for the benefit of others (Cayetano v. Monsod, G.R. No. 100113, September 3, 1991, 201 SCRA 210). The Bureau of Labor Relations is involved in collective bargaining negotiations (Article 250 of Labor Code)

Atty. Abling should not be disbarred but should be merely suspended from the practice of law. Suspension is the appropriate penalty for involvement in the unlawful practice of law (Tapay v. Bancolo, A.C. No. 9604, March 20, 2013, 694 SCRA 1).

**ALTERNATIVE ANSWER:**

No, Congressman Abling cannot be disbarred. A retained counsel formally appears for AWGP. His role is largely passive and cannot be considered as personal appearance. His participation in the collective bargaining negotiations does not entail personal appearance before an administrative body (Article VI, Section 13 of the 1987 Constitution)

- D. Quorum and voting majorities
- E. Discipline of members

- F. Electoral tribunals and the Commission on Appointments
  - 1. Nature
  - 2. Powers
- G. Powers of Congress
  - 1. Legislative
    - a) Legislative inquiries and the oversight functions

### **2012 BAR EXAMS**

A statutory provision requiring the President or an administrative agency to present the proposed implementing rules and regulations of a law to Congress which by itself or through a committee formed by it, retains a "right" or "power" to approve or disapprove such regulations before they may take effect, is a:

- a. legislative encroachment;
- b. legislative veto;**
- c. legislative oversight;**
- d. legislative scrutiny.

### **SUGGESTED ANSWER:**

(B) And (C) Abakada Guro Party List Vs Purisima, 562 Scra 251  
It Is Suggested That Either (B) Or (C) May Be Accepted As A Correct Answer

- b) Bicameral conference committee
- c) Limitations on legislative power

### **2012 BAR EXAMS**

Provisions unrelated to an appropriation bill are considered prohibited. These are called:

- a. interlopers;
- b. riders;**
- c. outriggers;
- d. add-ons.

### **SUGGESTED ANSWER:**

(B) GARCIA VS. MATA, 65 SCRA 517

## **2012 BAR EXAMS**

The requirement that "Every bill shall embrace only one subject which shall be expressed in the title thereof" prevents:

- a. rollercoaster legislation;
- b. log-rolling legislation;**
- c. rolling fields legislation;
- d. loggerhead legislation.

### **SUGGESTED ANSWER**

(B) COOLEY, CONSTITUTIONAL LIMITATIONS, P. 143

- (i) Limitations on revenue, appropriations and tariff measures

## **2012 BAR EXAMS**

If by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed:

- a. referred;
- b. unacted;
- c. refilled;
- d. re-enacted.**

### **SUGGESTED ANSWER:**

(D) SECTION 25(7), ARTICLE VI OF CONSTITUTION

## **2013 BAR EXAMS**

Senator GSC proposed a bill increasing excise taxes on tobacco and alcohol products. The generated incremental revenues shall be used for the universal health care program for all Filipinos and for tobacco farmers' livelihood. After the Senate passed the bill on third reading, it was transmitted to the House of Representatives which approved the bill in

toto. The President eventually signed it into law. Atty. JFC filed a petition before the Supreme Court, questioning the constitutionality of the new law.

Is the law constitutional? (1%)

(A) The law is constitutional because it is for a public purpose and has duly satisfied the three-readings-on-separate-days rule in both Houses.

(B) The law is unconstitutional because it violates the equal protection clause of the Constitution; it is limited only to alcohol and liquor products.

(C) It is constitutional because of the Enrolled Bill Theory.

(D) It is constitutional because it is valid in form and substance and complied with the required lawmaking procedures.

**(E) None of the above is correct.**

**SUGGESTED ANSWER:**

(E)(Article VI, Section 24 of the 1987 Constitution).

(ii) **Presidential veto and Congressional override**

2. **Non-legislative**

a) **Informing function**

b) **Power of impeachment**

c) **Other non-legislative powers**

**IV. Executive Department**

A. **Privileges, inhibitions and disqualifications**

1. **Presidential immunity**

2. **Presidential privilege**

B. **Powers**

1. **Executive and administrative powers in general**

2. **Power of appointment**

a) **In general**

**2013 BAR EXAMS**

While Congress was in session, the President appointed eight acting Secretaries. A group of Senators from the minority bloc questioned the validity of the appointments in a petition before the Supreme Court on the ground that while Congress is in session, no appointment that requires confirmation by the Commission on Appointments can be made without the latter's consent and that an undersecretary should instead be designated as Acting Secretary.

Should the petition be granted? (5%)

**SUGGESTED ANSWER:**

No, the petition should not be granted. The Department Head is an alter ego of the president and must enjoy his confidence even if the appointment will be merely temporary. The Senators cannot require the President to designate an Undersecretary to be the temporary alter ego of the president (*Pimentel Jr. v. Ermita*, 472 SCRA 587).

- b) **Commission on Appointments confirmation**
- c) **Midnight appointments**

**2014 BAR EXAMS**

Margie has been in the judiciary for a long time, starting from the lowest court. Twenty (20) years from her first year in the judiciary, she was nominated as a Justice in the Court of Appeals. Margie also happens to be a first-degree cousin of the President. The Judicial and Bar Council included her in the short-list submitted to the President whose term of office was about to end – it was a month before the next presidential elections. Can the President still make appointments to the judiciary during the so-called midnight appointment ban period? Assuming that he can still make appointments, could he appoint Margie, his cousin? (4%)

**SUGGESTED ANSWER:**

The President can make appointments to the Supreme Court two months before a presidential election until the end of his term but not to the rest of the Judiciary like the Court of Appeals. Under Section 4(1), Article VIII of the Constitution, vacancies in the Supreme Court shall be filled within ninety (90) days from the occurrence of the vacancy. Under Section 9, Article VIII of the Constitution, vacancies in the lower courts shall be filled within ninety (90) days from submission of the list of nominees. These appointments to the courts, which is what is sought to be prevented by the prohibition (*De Castro v. Judicial and Bar Council*, 615 SCRA 666 (2010))

The President may also appoint his first cousin, Margie, as Justice of the Court of Appeals. The prohibition in Section 13, Article VII of the Constitution against appointment by the president of relatives within the fourth degree by consanguinity or affinity does not include appointments to the judiciary.

**ALTERNATIVE ANSWER (FOR FIRST QUESTION):**

The President cannot make appointments to the Judiciary during two months before the presidential election until the end of his term because of the ban in Section 15, Article VII of the Constitution. Despite the constitutional mandate to fill vacancies in Judiciary within the prescribed periods, the prohibitions against the appointments releases the President from the obligation to appoint within them. The delay is excusable, since it will be impossible to comply with his obligation. (2014 BAR EXAMS)

- d) Power of removal
- 3. Power of control and supervision
  - a) Doctrine of qualified political agency

### **2014 BAR EXAMS**

Under the so-called doctrine of qualified political agency, (1%)

- (A) civil servants must first qualify before they could be appointed to office
- (B) all employees in the government are merely agents of the people
- (C) the acts of subordinates presumptively of those of the heads of offices disapproves them**
- (D) members of the Cabinet must have the absolute trust and confidence of the President

### **2015 BAR EXAMS**

A law provides that the Secretaries of the Departments of Finance and Trade and Industry, the Governor of the Central Bank, the Director General of the National Economic Development Authority, and the Chairperson of the Philippine Overseas Construction Board shall sit as ex-officio members of the Board of Directors (BOD) of a government owned and controlled corporation (GOCC). The other four (4) members shall come from the private sector. The BOD issues a resolution to implement a new organizational structure, staffing pattern, a position classification system, and a new set of qualification standards. After the implementation of the Resolution, Atty. Dipasupil questioned the legality of the Resolution alleging that the BOD has no authority to do so. The BOD claims otherwise arguing that the doctrine of qualified political agency applies to the case. It contends that since its agency is attached to the Department of Finance, whose head, the Secretary of Finance, is an alter ego of the President, the BOD's acts were also the acts of the President. Is the invocation of the doctrine by the BOD proper? Explain. (40/0)

**ANSWER:**

The invocation by the Board of directors of the doctrine of qualified political agency is not proper.

“The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief executive; that the heads of the executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the president as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.

The Cabinet Members sat on the Board of Directors *ex officio* , or by reason of their office or function, “not because of their direct appointment to the Board by the president. Evidently, it was the law, not the President, that sat them in the Board.”

“Under the circumstances, when the members of the Board of Directors effected the assailed... reorganization, that were acting as the responsible members of the Board of Directors” constituted pursuant to the law,” not as the alter egos of the President.” (Trade and Investment Development Corporation of the Philippines v./ Manalang-Demigillo, G.R. No. 185571, March 5, 2013; Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines, G.R. No. 168613, March 5, 2013)

- b) Executive departments and offices
  - c) Local government units
4. Military powers

## **2015 BAR EXAMS**

- (1) Distinguish the President's authority to declare a state of rebellion from the authority to proclaim a state of national emergency. (2%)

### **ANSWER:**

While both the power to declare a state of rebellion and the power to proclaim a state of national emergency may be justified under the President's general Ordinance Powers under the provisions of the Administrative Code (Chapter 2, Book III of Executive Order No. 292

(Administrative Code of 1987), the power to declare a state of rebellion springs from the President's so called "calling out power" under Section 18 of Article VII of the Constitution, which provides that "whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion," (*Sanlakas v. Executive Secretary*, G.R. No. 159085, February 3, 2004, 421 SCRA 656), while the power to proclaim a state of national emergency can be said to be based primarily on his duty to enforce the laws as well as to formulate policies to be embodied in existing laws, consistent with the provisions of Section 17 of Article VII of the Constitution. Under said provision, the President "sees to it that all laws are enforced by the officials and employees of his department." Moreover, "in the exercise of such function, the President, if needed, may employ the powers attached to this office as the Commander-in-Chief of all armed forces of the country, including the Philippine National Police under the Department of Interior and Local Government.

"(*David v. Arroyo*, G.R. No. 171396, May 3, 2006)

It must be noted though, that without a law promulgated pursuant to the provisions of Section 23(2) of Article VI, and Section 17 of Article XII, both of which authorize the statutory delegation of emergency powers in favor of the President, he is limited to the statutory delegation of emergency powers in favor of the President, he is limited to the exercise of his calling-out power under Section 18 of Article VII of the Constitution, and may not exercise emergency powers. (*David V. Arroyo*, G.R. No. 171396, May 3, 2006)

- (1) "The 1987 Constitution, specifically Section 19 of Article VII and Section 5 of Article IX-C, provides that the President of the Philippines possesses the power to grant pardons, along with other acts of executive clemency, to wit:

"Section 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons and remit fines and forfeitures, after conviction by final judgment.

"He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

"Section 5. NO pardon, amnesty, parole or suspension of sentence for violation of election laws, rules and regulations shall be granted by the President without the favorable recommendation of the Commission.

"It is apparent from the foregoing constitutional provisions that the only instances in which the President may not extend pardon remain to be

in: (1) impeachment cases; (2) cases that have not yet resulted in a final conviction; and (3) cases involving violations of election laws, rules and regulations in which there was no favorable recommendation coming from the COMELEC.” (Risos-Vidal v. COMELEC, G.R. No. 206666, January 21, 2015)

It may be added that pardons may not be extended to a person convicted of legislative contempt, as this would violate the doctrine of separation of powers or of civil contempt since this would involve the benefit not of the Senate itself but of the private litigant whose rights have been violated by the contemner. Pardon cannot also be extended for purposes of absolving the pardonee of civil liability, including judicial costs, since, again the interest that is remitted does not belong to the State but to the private litigant. (Philippine Political Law, Cruz and Cruz, 2014 Edition page 445)

5. **Pardoning power**
  - a) **Nature and limitations**

## **2012 BAR EXAMS**

The President cannot grant pardon in cases of impeachment. He may however exercise such power when:

**a. A person convicted in an impeachment proceeding is subject to prosecution, trial and punishment in an ordinary criminal action;**

b. A person convicted in an impeachment proceeding is granted an absolute pardon;

c. A person convicted in an impeachment proceeding files his appeal before the Supreme Court;

d. None of the above.

### **SUGGESTED ANSWER:**

#### **(A) SECTION 19, ARTICLE VII OF CONSTITUTION**

**(2015)**“The 1987 Constitution, specifically Section 19 of Article VII and Section 5 of Article IX-C, provides that the President of the Philippines possesses the power to grant pardons, along with other acts of executive clemency, to wit:

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- b) Forms of executive clemency  
6. Diplomatic power

### **2013 BAR EXAMS**

The President entered into an executive agreement with Vietnam for the supply to the Philippines of animal feeds not to exceed 40,000 tons in any one year. The Association of Animal Feed Sellers of the Philippines questioned the executive agreement for being contrary to R.A. 462 which prohibits the importation of animal feeds from Asian countries. Is the challenge correct? (1%)

**(A) Yes, the executive agreement is contrary to an existing domestic law.**

(B) No, the President is solely in charge of foreign relations and all his actions in this role form part of the law of the land.

(C) No, international agreements are sui generis and stand independently of our domestic laws.

(D) Yes, the executive agreement is actually a treaty which does not take effect without ratification by the Senate.

(E) Yes, the challenge is correct because there is no law empowering the President to undertake the importation.

**SUGGESTED ANSWER:**

(A)(Gonzales v. Hechanova, G.R.No. L-21897, October 22, 1963, 9 SCRA 230).

**2015 BAR EXAMS**

The Philippines and the Republic of Kroi Sha established diplomatic relations and immediately their respective Presidents signed the following: ( 1) Executive Agreement allowing the Republic of Kroi Sha to establish its embassy and consular offices within Metro Manila; and (2) Executive Agreement allowing the Republic of Kroi Sha to bring to the Philippines its military complement, warships, and armaments from time to time for a period not exceeding one month for the purpose of training exercises with the Philippine military forces and exempting from Philippine criminal jurisdiction acts committed in the line of duty by foreign military personnel, and from paying custom duties on all the goods brought by said foreign forces into Philippine territory in connection with the holding of the activities authorized under the said Executive Agreement. Senator Maagap questioned the constitutionality of the said Executive Agreements and demanded that the Executive Agreements be submitted to the Senate for ratification pursuant to the Philippine Constitution. Is Senator Maagap correct? Explain. ( 4 % )

**SUGGESTED ANSWER:**

It is submitted that only the first Executive Agreement regarding the establishment of the embassy of Kroi Sha need not be submitted to the Senate for its concurrence following the general rule that the Executive Agreements need not to submitted to the Senate for its concurrence, under the provisions of Section 21 of Article VII of the Constitution. (China National Machinery & Equipment Corporation v. Sta. Maria, G.R. No. 185572, February 7, 2012, 665 SCRA 189)

The second Executive Agreement which allows the Republic of Kroi Sha to bring to the Philippines its military complement, warships, and armaments from time may be subject to the provisions of Section 25 of Article XVIII of the Constitution, which provides that “foreign bases, troops or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national

referendum held for that purpose, and recognized as a treaty by the of the contracting state.”

It should be noted that, under the Constitution, the Senate merely provides its concurrence to, and does not ratify, treaties. It is the President who ratifies treaties. (Pimentel v. Executive Secretary, G.R. No. 15808, July 16, 2008, 462 SCRA 622)

### **Alternative Answer**

Senator Maagap is wrong.

Executive Agreements need not be submitted to the Senate for its concurrence, under the provisions of Section 21 of Article VII of the Constitution. (China National Machinery & Equipment Corporation v. Sta. Maria, G.R. NO. 185572, February 7, 2012, 665 SCRA 189) This would be true with respect to both Executive Agreements in the problem, including the second one, which allows the Republic of Kroi Sha to bring to the Philippines its military complements, warships and armaments from time to time. Under Section 25 of Article XVIII of the Constitution, only such agreements with the United States of America would be required to be the subject of a treaty which would need the concurrence of the Senate.

It should be noted that, under the Constitution, the Senate merely provides its concurrence to, and does not ratify, treaties. It is the President who ratifies treaties, (Pimentel v. Executive Secretary, G.R. No. 15808, July 16, 2008, 462 SCRA 622)

### 7. **Powers relative to appropriation measures**

#### **2012 BAR EXAMS**

The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines only upon prior concurrence of the:

- a. House of Representatives;
- b. Senate;
- c. Central Bank;
- d. Monetary Board.**

#### **SUGGESTED ANSWER:**

(D) SECTION 20, ARTICLE VII OF CONSTITUTION

#### **2013 BAR EXAMS**

Which of the following statements is correct? (1%)

(A) The President, with the concurrence of the Monetary Board, can guarantee a foreign loan on behalf of the Republic of the Philippines.

**(B) Congress may, by law, provide limitations on the President's power to contract or guarantee foreign loans on behalf of the Republic of the Philippines.**

(C) In order to be valid and effective, treaties and executive agreements must be concurred in by at least two-thirds of all the Members of the Senate.

(D) The President shall, at the end of every quarter of the calendar year, submit to Congress a complete report of the loans contracted or guaranteed by the Government or government-owned and controlled corporations.

(E) All the above choices are defective in some respects.

**SUGGESTED ANSWER:**

(B)(Article VII, Section 20 of the 1987 Constitution).

## **2014 BAR EXAMS**

The President, concerned about persistent reports of widespread irregularities and shenanigans related to the alleged ghost projects with which the pork barrel funds of members of Congress had been associated, decided not to release the funds authorized under a Special Appropriations Act for the construction of a new bridge. The Chief Executive explained that, to properly conserve and preserve the limited funds of the government, as well as to avoid further mistrust by the people, such a project – which he considered as unnecessary since there was an old bridge near the proposed bridge which was still functional – should be scrapped. Does the President have such authority? (4%)

**SUGGESTED ANSWER:**

The Presidential has the authority to withhold the release of the funds under a Special Appropriation Act for a Project which he considered unnecessary. The faithful execution of the laws requires the President to desist from implementing a law if by doing so will prejudice public interest. It is folly to require the President to spend the entire amounts appropriated in the law in such a case. (Philippine Constitution Association v. Enriquez, 235 SCRA 506 (1994)).

**ALTERNATIVE ANSWER:**

The President does not possess the authority to scrap the Special appropriated funds. Generally, he cannot replace legislative discretion with his own personal judgment as to the wisdom of a law (Araullo v. Aquino G.R. No. 209287, July 1, 2014.) (2014 BAR EXAMS)

8. **Delegated powers**

9. **Veto powers**

## 2012 BAR EXAMS

The power of the President to veto any particular part in an appropriation revenue, or tariff bill, is called the:

- a. specific veto;
- b. revenue veto;
- c. item veto;**
- d. monetary veto.

### SUGGESTED ANSWER:

**(C) SECTION 27(2) ARTICLE VI OF CONSTITUTION**

- 10. Residual powers
- 11. Executive privilege

## 2015 BAR EXAMS

Several senior officers of the Armed Forces of the Philippines received invitations from the Chairperson of the Senate Committees on National Defense and Security for them to appear as resource persons in scheduled public hearings regarding a wide range of subjects. The invitations state that these public hearings were triggered by the privilege speeches of the Senators that there was massive electoral fraud during the last national elections. The invitees Brigadier General Matapang and Lieutenant Colonel Makatuwiran, who were among those tasked to maintain peace and order during the last election, refused to attend because of an Executive Order banning all public officials enumerated in paragraph 3 thereof from appearing before either house of Congress without prior approval of the President to ensure adherence to the rule of executive privilege. Among those included in the enumeration are "senior officials of executive departments who, in the judgment of the department heads, are covered by executive privilege." Several individuals and groups challenge the constitutionality of the subject executive order because it frustrates the power of the Congress to conduct inquiries in aid of legislation under Section 21, Article VI of the 1987 Constitution. Decide the case. (5%)

### SUGGESTED ANSWER:

The subject Executive order banning all public officials enumerated in paragraph 3 thereof from appearing before either house of Congress without prior approval of the President to ensure adherence to the rule of executive privilege is unconstitutional.

Paragraph 3 of said Executive Order “virtually provides that, once the head of office determines that a certain information is privileged, such determination is presumed to bear the President’s authority and has the effect of prohibiting the official from appearing before the congress, subject only to the express pronouncement of the President that it is allowing the appearance of such official. These provisions thus allow the President to authorize claims of privilege by mere silence.

“Such presumptive authorization, however, is contrary to the exceptional nature of the privilege. Executive, as already discussed, is recognized with respect to information the confidential nature of which is crucial to the fulfillment of the unique role and responsibilities of the executive branch, or in those instances where exemption from disclosure is necessary to the discharge of highly important executive responsibilities. The doctrine of executive privilege is thus premised on the fact that certain information must, as a matter of necessity, be kept confidential in thus premised on the fact that certain information must, as a matter of necessity, be kept confidential in pursuit of the public interest. The privilege being, by definition, an exemption from the obligation to disclose information, in this case to Congress, the necessity must be of such high degree as to outweigh the public interest in enforcing that obligation in a particular case.

“In light of this highly exceptional nature of the privilege, the Court finds it essential to limit to the President the power to invoke the privilege. (He) may of course authorize the Executive Secretary to invoke the privilege on her behalf, in which case the Executive Secretary must state that the authority is “By order of the President”, which means that he personally consulted with her. The privilege being an extraordinary power, it must be wielded only by the highest official in the executive hierarchy. In other words, the President may not authorize her subordinates to exercise such power. There is even less reason to uphold such authorization in the instant case where the authorization is not explicit but mere silence. (Paragraph) 3 xxx is further invalid on this score.”

“Upon a determination by the designated head of office or by the President that an official is “covered by the executive privilege,” such official is subjected to the requirement that he first secure the consent of the President prior to appearing before Congress. This requirement effectively bars the appearance of the official concerned unless the same is permitted by the President.

“The proviso allowing the President to give its [sic] consent means nothing more than that the President may reverse a prohibition which already exists by virtue of E.O. 464.

“Thus, underlying this requirement of prior consent is the determination by a head of office, authorized by the President under E.O. 464, or by the President herself, that such official is in possession of

**V. C. Rules of Succession**  
**Judicial Department**  
**A. Concepts**

**2013 BAR EXAMS**

In her interview before the Judicial and Bar Council (JBC), Commissioner Annie Amorsolo of the National Labor Relations Commission claims that she should be given credit for judicial service because as NLRC Commissioner, she has the rank of a Justice of the Court of Appeals; she adjudicates cases that are appealable to the Court of Appeals; she is assigned car plate No. 10; and she is, by law, entitled to the rank, benefits and privileges of a Court of Appeals Justice.

If you are a member of the JBC, would you give credit to this explanation?  
(6%)

**SUGGESTED ANSWER:**

No, I will not give credence to the explanation of Commissioner Annie Amorsolo. Her ranking merely means that she has the same salary and benefits as a Justice of the Court of Appeals. However, she is not actually a Justice of the Court of Appeals. The National labor Relations is not a court. She does not perform judicial functions (Noblejas v. Teehankee, G.R. No. L-28790, APRIL 29, 1968, 23 SCRA 405).

1. **Judicial power**
2. **Judicial review**

**2013 BAR EXAMS**

The provision under the Constitution — that any member who took no part, dissented, or inhibited from a decision or resolution must state the

reason for his dissent or non-participation — applies \_\_\_\_\_.  
(1%)

(A) only to the Supreme Court

(B) to both the Supreme Court and the Court of Appeals

(C) to the Supreme Court, Court of Appeals and the Sandiganbayan

**(D) to the Supreme Court, the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals**

(E) to all collegial judicial and quasi-judicial adjudicatory bodies

**SUGGESTED ANSWER:**

(D)(Article VIII, Section 13 of the 1987 Constitution).

**2012 BAR EXAMS**

A person who has a personal and substantial interest in the case, such that he has sustained, or will sustain, direct injury as a result of its enforcement is considered to have:

a. understanding to challenge the governmental act;

**b. standing to challenge the governmental act;**

c. opportunity to challenge the governmental act;

d. familiarity to challenge the governmental act.

**SUGGESTED ANSWER:**

(B) PEOPLE VS VERA, 65 PHIL. 56

**2012 BAR EXAMS**

Mr. Yellow and Mr. Orange were the leading candidates in the vice-presidential elections. After elections, Yellow emerged as the winner by a slim margin of 100,000 votes. Undaunted, Orange filed a protest with the Presidential Electoral Tribunal (PET). After due consideration of the facts and the issues, the PET ruled that Orange was the real winner of the elections and ordered his immediate proclamation.

- a. Aggrieved, Yellow filed with the Supreme Court a Petition for Certiorari challenging the decision of the PET alleging grave abuse of discretion. Does the Supreme Court have jurisdiction? Explain. (3%)
- b. Would the answer in (a.) be the same if Yellow and Orange were contending for a senatorial slot and it was the Senate Electoral Tribunal (SET) who issued the challenged ruling? (3%)
- c. What is the composition of the PET? (2%)
- d. What is judicial power? Explain Briefly. (2%)

**SUGGESTED ANSWER:**

A. The Supreme Court has no jurisdiction over the petition the presidential electoral tribunal is not simply an agency to which the members of the supreme court were assigned. It is not separate from the supreme court. (Macalintal vs. Presidential electoral tribunal, 631 SCRA 239)

B. The supreme court would have jurisdiction if it were the senate electoral tribunal who issued the challenged ruling. The supreme court can review its decision if it acted with grave abuse of discretion. (Lerias vs house of representative electoral tribunal, 202 SCRA 808)

C. The presidential electoral tribunal is composed of the chief justice and associate justice of the supreme court sitting en banc. (section 4, article vii of the constitution.)

D. Judicial power- sec 1(1) art. 8 is the authority to settle justifiable controversies or disputes involving right that are enforceable and demandable before the courts of justice or the redress of wrong for violation of such right. (Lopez vs Roxas, 17 SCRA 756.) It includes the duty of the courts to settle actual controversies involving right which are legally demandable and enforceable, and to determine whether or not there has a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government (section 1, article vii of constitution.)

- a) Operative fact doctrine

**2012 BAR EXAMS  
MULTIPLE CHOICE 32**

The "operative fact" doctrine of constitutional law is applied when a law is declared:

- a. operative;

b. factual;

c. constitutional;

**d. unconstitutional.**

**SUGGESTED ANSWER:**

**(D) DE AGBAYANI VS. PHILIPPINES NATIONAL BANK, 38 SCRA 429**

b) Moot questions

c) Political question doctrine

B. Safeguards of Judicial independence

C. Judicial restraint

D. Appointments to the Judiciary

**2014 BAR EXAMS**

Margie has been in the judiciary for a long time, starting from the lowest court. Twenty (20) years from her first year in the judiciary, she was nominated as a Justice in the Court of Appeals. Margie also happens to be a first-degree cousin of the President. The Judicial and Bar Council included her in the short-list submitted to the President whose term of office was about to end – it was a month before the next presidential elections. Can the President still make appointments to the judiciary during the so-called midnight appointment ban period? Assuming that he can still make appointments, could he appoint Margie, his cousin? (4%)

**SUGGESTED ANSWER:**

The President can make appointments to the Supreme Court two months before a presidential election until the end of his term but not to the rest of the Judiciary like the Court of Appeals. Under Section 4(1), Article VIII of the Constitution, vacancies in the Supreme Court shall be filled within ninety (90) days from the occurrence of the vacancy. Under Section 9, Article VIII of the Constitution, vacancies in the lower courts shall be filled within ninety (90) days from submission of the list of nominees. These appointments to the courts, which is what is sought to be prevented by the prohibition (De Castro v. Judicial and Bar Council, 615 SCRA 666 (2010))

The President may also appoint his first cousin, Margie, as Justice of the Court of Appeals. The prohibition in Section 13, Article VII of the Constitution against appointment by the president of relatives within the fourth degree by consanguinity or affinity does not include appointments to the judiciary.

**ALTERNATIVE ANSWER (FOR FIRST QUESTION);**

The President cannot make appointments to the Judiciary during two months before the presidential election until the end of his term because of the ban in Section 15, Article VII of the Constitution. Despite the constitutional mandate to fill vacancies in Judiciary within the prescribed

periods, the prohibitions against the appointments releases the President from the obligation to appoint within them. The delay is excusable, since it will be impossible to comply with his obligation. (2014 BAR EXAMS)

E. **Supreme Court**

1. **En banc and division cases**

**2012 BAR EXAMS**

When the Supreme Court sits in division, cases can be decided by as few as a minimum of:

- a. **three votes;**
- b. four votes;
- c. five votes;
- d. six votes.

**SUGGESTED ANSWER:**

(A) SECTION 4(3), ARTICLE VII OF CONSTITUTION

**2012 BAR EXAMS**

When the Supreme Court sits en banc, cases are decided by the concurrence of a majority of the members who:

- a. actually sent in memos on matters for deliberation and called in their votes thereon;
- b. actually participated in the oral arguments and voted thereon;
- c. **actually took part in the deliberations on the issues in the case and voted thereon;**
- d. actually took part in the voting thereon and took notes on the actual deliberations.

**SUGGESTED ANSWER:**

(C) SECTION 4(2), ARTICLE VII OF CONSTITUTION

**2014 BAR EXAMS**

The Court had adopted the practice of announcing its decision in important, controversial or interesting cases the moment the votes had

been taken among the justices, even as the final printed decision and separate opinions are not yet available to the public. In a greatly anticipated decision in a case of wide-ranging ramifications, the voting was close – 8 for the majority, while 7 were for the other side. After the Court had thus voted, it issued a press release announcing the result, with the advice that the printed copy of the decision, together with the separate opinions, were to be issued subsequently. The following day, however, one of the members of the Court died. The Court then announced that it would deliberate anew on the case since apparently the one who died belonged to the majority. Citizens for Transparency, a group of civic-spirited professionals and ordinary citizens dedicated to transparency and accountability in the government, questioned the act of the Court. The petitioners claimed the decision had already been validly adopted and promulgated. Therefore, it could no longer be recalled by the Court. At the same time, the group also asked the Court to disclose to the public the original decision and the separate opinions of the magistrates, together with what they had deliberated on just before they came up with the press release about the 8-7 decision. (6%)

(A) Was the announced 8-7 decision already validly promulgated and thus not subject to recall?

(B) If the decision was not yet finalized at the time when the justice died, could it still be promulgated?

(C) If the decision was still being finalized, should the Court release to the public the majority decision and the separate opinions as originally announced, together with their deliberations on the issues?

**SUGGESTED ANSWER:**

(A) The decision cannot be deemed to have been promulgated simply because of the announcement of the voting in a press release, because the decision has not yet been issued and filed with the Clerk of Court. Until the decision is filed with the Clerk of Court, the Justices still have control over the decision and they can still change their votes (Limkaichong v. Commission on Elections, 594 SCRA 434 (2009)).

**ALTERNATIVE ANSWER:**

B. The decision can no longer be promulgated if the Justice who belonged to the majority died, for lack of majority vote. The vote he cast is no longer valid, as he was no longer an incumbent member of the Supreme Court (Iao v. To-Chip, 158 SCRA 243 (1988))

C. The Supreme Court should not release to the public the majority opinion and the separate opinions, as well as its deliberations. They are part of its confidential internal deliberations. (Limkaichong v. Commission on Elections, 594 SCRA 434 (2009)).

**ANOTHER ALTERNATIVE ANSWER FOR (B):**

The decision can be promulgated even if the Supreme Court en banc is equally divided, if after the case was again deliberated upon, no majority decision was reached. If the case is an original action, it should be dismissed. If it is an appealed case, the decision appealed from should

be affirmed if it is a civil case. If it is a criminal case, the accused should be acquitted (Section 7, Rule 56 of the Rules of Court; Section 3, Rule 125 Revised Rules on Criminal Procedure)

## 2. Procedural rule-making

### **2013 BAR EXAMS**

Congress enacted a law providing for trial by jury for those charged with crime or offenses punishable by reclusion perpetua or life imprisonment. The law provides for the qualifications of members of the jury, the guidelines for the bar and bench for their selection, the manner a trial by jury shall operate, and the procedures to be followed.

Is the law constitutional? (6%)

### **SUGGESTED ANSWER:**

The law providing for trial by jury is unconstitutional because of the omission in Article VIII, Section 5(5) of the 1987 Constitution of the provisions in Article VIII, Section 13 of the 1935 Constitution and Article X, Section 5(5) 1973 Constitution, which both authorized the Legislature to repeal, alter or supplement the rules of procedure promulgated by the Supreme Court. Congress can no longer enact any law governing rules of procedure for the courts (*Echegaray v. Secretary of Justice*, G.R. No. 132601, October 12, 1998, 301 SCRA 96).

### **2014 BAR EXAMS**

Congress enacted a law exempting certain government institutions providing social services from the payment of court fees. Atty. Kristopher Timoteo challenged the constitutionality of the said law on the ground that only the Supreme Court has the power to fix and exempt said entities from the payment of court fees.

Congress, on the other hand, argues that the law is constitutional as it has the power to enact said law for it was through legislative fiat that the Judiciary Development Fund (JDF) and the Special Allowance for Judges and Justices (SAJJ), the funding of which are sourced from the fees collected by the courts, were created. Thus, Congress further argues that if it can enact a law utilizing court fees to fund the JDF and SAJJ, a fortiori it can enact a law exempting the payment of court fees.

### **SUGGESTED ANSWER:**

The law is unconstitutional. Congress cannot enact a law allowing the exemption of certain entities from the payment of court fees. Well worth noting is that the **1973 Constitution further strengthened** the independence of the judiciary by giving to it the additional power to promulgate rules governing the integration of the Bar.

The **1987 Constitution** molded an even **stronger and more independent judiciary**. Among others, **it enhanced the rule making power of this Court**. Its Section 5(5), Article VIII provides:

X X X X X X X X

Section 5. The Supreme Court shall have the following powers:

X X X X X X X X

(5) **Promulgate rules concerning the protection and enforcement of constitutional rights**, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. **Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.** Fiscal autonomy recognizes the power and authority of the Court to levy, assess and collect fees,<sup>[31]</sup> including legal fees. Moreover, legal fees under Rule 141 have two basic components, the Judiciary Development Fund (JDF) and the Special Allowance for the Judiciary Fund (SAJF).<sup>[32]</sup> The laws which established the JDF and the SAJF<sup>[33]</sup> expressly declare the identical purpose of these funds to guarantee the independence of the Judiciary as mandated by the Constitution and public policy.<sup>[34]</sup> Legal fees therefore do not only constitute a vital source of the Courts financial resources but also comprise an essential element of the Courts fiscal independence. Any exemption from the payment of legal fees granted by Congress to government-owned or controlled corporations and local government units will necessarily reduce the JDF and the SAJF. Undoubtedly, such situation is constitutionally infirm for it impairs the Courts guaranteed fiscal autonomy and erodes its independence.

**The rule making power of this Court was expanded.** This Court for the **first time** was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the **first time** the power to disapprove rules of procedure of special courts and quasi-judicial bodies. **But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure.** In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive.

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(JDF) and the Special Allowance for the Judiciary Fund (SAJF).<sup>[32]</sup> The laws which established the JDF and the SAJF<sup>[33]</sup> expressly declare the identical purpose of these funds to guarantee the independence of the Judiciary as mandated by the Constitution and public policy.<sup>[34]</sup> Legal fees therefore do not only constitute a vital source of the Courts financial resources but also comprise an essential element of the Courts fiscal independence. Any exemption from the payment of legal fees granted by Congress to government-owned or controlled corporations and local government units will necessarily reduce the JDF and the SAJF. Undoubtedly, such situation is constitutionally infirm for it impairs the Courts guaranteed fiscal autonomy and erodes its independence. (In Re: Petition for Exemption of GSIS, February 10, 2010)

### **2014 BAR EXAMS**

Congress passed a law, R.A. No. 15005, creating an administrative Board principally tasked with the supervision and regulation of legal education. The Board was attached to the Department of Education. It was empowered, among others, to prescribe minimum standards for law admission and minimum qualifications of faculty members, the basic curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, as well as to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo anytime during the law course, and to adopt a system of continuing legal education. Professor Boombastick, a long-time law practitioner and lecturer in several prestigious law schools, assails the constitutionality of the law arguing; that it encroached on the prerogatives of the Supreme Court to promulgate rules relative to admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. If you were Professor Boombastick's understudy, how may you help him develop clear, concise and cogent arguments in support of his position based on the present Constitution and the decisions of the Supreme Court on judicial independence and fiscal autonomy? (4%)

#### **SUGGESTED ANSWER:**

RA 15005 is unconstitutional. Under the 1987 Constitution, Sec 5(5), the Supreme Court shall promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, **the admission to the practice of law**, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

RA 15005 violates the Constitution because it allows another body to promulgate rules to the admission to the IBP, practice of law and legal assistance. Thus, it is unconstitutional.

3. Administrative supervision over lower courts
4. Original and appellate jurisdiction

### **2014 BAR EXAMS**

Congress may increase the appellate jurisdiction of the Supreme Court:  
(1%)

**(A) anytime it wants**

(B) if requested by the Supreme Court

(C) upon recommendation of the President

(D) only with the advice and concurrence of the Supreme Court

(E) whenever it deems it appropriate, advisable or necessary.

**SUGGESTED ANSWER:**

(A) Only with the device and concurrence of the Supreme Court

## **VI. Judicial privilege Constitutional Commissions**

### **2013 BAR EXAMS**

Patricio was elected member of the House of Representative in the May 2010 Elections. His opponent Jose questioned Patricio's victory before the House of Representatives Electoral Tribunal and later with the Supreme Court.

In the decision promulgated in November 2011, the Court ruled in Jose's favor; thus, Patricio was ousted from his seat in Congress. Within a year from that decision, the President can appoint Patricio \_\_\_\_\_. (1%)

**(A) only as member of the board of directors of any government owned and controlled corporation**

(B) only as a deputy Ombudsman

(C) only as a Commissioner of the Civil Service Commission

(D) only as Chairman of the Commission on Elections

(E) to any position as no prohibition applies to Patricio

**2012 BAR EXAMS**

The Civil Service shall be administered by the Civil Service Commission composed of a:

- a. Chairman and a Commissioner;
- b. Chairman and two (2) Commissioners;**
- c. Chairman and three (3) Commissioners;
- d. Chairman and four (4) Commissioners.

**2012 BAR EXAMS**

Which one of the following is NOT an independent Constitutional Commission under Article IX, Section 1 of the Constitution:

- a. Commission on Elections;
- b. Commission on Human Rights;**
- c. Civil Service Commission;
- d. Commission on Audit.

**SUGGESTED ANSWER:**

(B) SECTION 1, ARTICLE IX-A OF CONSTITUTION

- A. **Constitutional safeguards to ensure independence of commissions**

**2012 BAR EXAMS**

The independent Constitutional Commissions enjoy:

- a. decisional autonomy;
- b. organizational autonomy;**
- c. fiscal autonomy;
- d. quasi-judicial autonomy.

**SUGGESTED ANSWER:**

(A) SECTION 5, ARTICLE IX-A CONSTITUTION

**2013 BAR EXAMS**

Choose the least accurate statement about the independence guaranteed by the 1987 Constitution to the following constitutional bodies: (1%)

(A) The Constitution guarantees the COMELEC decisional and institutional independence similar to that guaranteed to the Judiciary.

(B) All bodies labeled as “independent” by the Constitution enjoy fiscal autonomy as an attribute of their independence.

(C) Not all bodies labeled as “independent” by the Constitution were intended to be independent from the Executive branch of government.

(D) The Constitution guarantees various degrees of independence from the other branches of government when it labels bodies as “independent”.

(E) The COMELEC, the COA, and the CSC enjoy the same degree of independence.

**SUGGESTED ANSWER:**

(A)(Article IX-A of the 1987 Constitution).

**2014 BAR EXAMS**

Towards the end of the year, the Commission on Audit (COA) sought the remainder of its appropriation from the Department of Budget and Management (DBM). However, the DBM refused because the COA had not yet submitted a report on the expenditures relative to the earlier amount released to it. And, pursuant to the “no report, no release” policy of the DBM, COA is not entitled to any further releases in the meantime. COA counters that such a policy contravenes the guaranty of fiscal autonomy granted by the Constitution. Is COA entitled to receive the rest of its appropriations even without complying with the DBM policy? (4%)

**SUGGESTED ANSWER:**

Yes. COA is entitled to the rest of its appropriations even without complying with the DBM policy. That the no report, no release policy may not be validly enforced against offices vested with fiscal autonomy is not disputed. Indeed, such policy cannot be enforced against offices possessing fiscal autonomy without violating Article IX (A), Section 5 of the Constitution which provides:

Sec. 5. The Commission shall enjoy fiscal autonomy. Their approved appropriations shall be automatically and regularly released.

(Civil Service Commission vs Department of Budget and Management, July 22, 2005)

B. **Powers and functions of each commission**

C. **Prohibited offices and interests**

**2015 BAR EXAMS**

Professor Masipag who holds a plantilla or regular item in the University of the Philippines (UP) is appointed as an Executive Assistant in the Court of Appeals (CA). The professor is considered only on leave of absence in UP while he reports for work at the CA which shall pay him the salary of the Executive Assistant. The appointment to the CA position was questioned, but Professor Masipag countered that he will not collect the salary for both

positions; hence, he can not be accused of receiving double compensation. Is the argument of the professor valid? Explain. (4%)

**ANSWER:**

Although Professor Masipag is correct in saying that “he cannot be accused of receiving double compensation” as he would not actually be receiving additional or double compensation, it is submitted that he may nevertheless not be allowed to accept the position of Executive Assistant of the Court of Appeals during his incumbency as a regular employee of the University of the Philippines, as the former would be an incompatible office not allowed to be concurrently held by him under the provisions of Article IX-B, Section 7 of the Constitution, the second paragraph of which species that “unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office in the Government.”

D. **Jurisdiction of each constitutional commission**

E. **Review of final orders, resolutions and decisions**

1. **Rendered in the exercise of quasi-judicial functions**
2. **Rendered in the exercise of administrative functions**

## VII. **Bill of Rights**

A. **Fundamental powers of the state (police power, eminent domain, taxation)**

### **2012 BAR EXAMS**

The totality of governmental power is contained in three great powers:

- a. police power, power of sequestration, power of foreign policy;
- b. power of immigration, municipal power, legislative power;
- c. executive power, legislative power, judicial power;**
- d. police power, power of eminent domain, power of taxation.**

### **SUGGESTED ANSWER:**

It is suggested that either (c) and (d) may be accepted as a correct answer.

1. **Concept, application and limits**

### **2012 BAR EXAMS**

The most essential, insistent and the least limitable of (government) powers, extending as it does to all the great public needs, is:

- a. emergency power;
- b. police power;**
- c. legislative power;
- d. power to declare martial law.

**SUGGESTED ANSWER:**

(B) EDU VS. ERICTA, 35 SCRA 482

- 2. Requisites for valid exercise
- 3. Similarities and differences
- 4. Delegation
- B. Private acts and the Bill of Rights
- C. Due process - the rights to life, liberty & property
  - 1. Relativity of due process
  - 2. Procedural and substantive due process

**2012 BAR EXAMS**

A criminal statute that "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute" is:

- a. void for fair notice;**
- b. void for arbitrariness;
- c. void for vagueness;
- d. void conclusively.

**SUGGESTED ANSWER:**

(A) ESTRADA VS. SANDIGANBAYAN, 369 SCRA 394

- 3. Constitutional and statutory due process
- 4. Hierarchy of rights

**2012 BAR EXAMS**

- a. What do you understand by the term "heirarchy of civil liberties"? Explain. (5%)
- b. xxx;
- c. xxx

**SUGGESTED ANSWER:**

- A. The hierarchy of civil liberties means that freedom of expression and the rights of peaceful assembly are superior to property rights. (philippine blooming mills employees organization vs. Philippine blooming mills company, inc. ., 51 scra 189.)

**2012 BAR EXAMS**

In the hierarchy of civil liberties, which right occupies the highest preferred position:

- a. right to academic freedom;
- b. right to a balanced and healthful ecology;
- c. right to freedom of expression and of assembly;**
- d. right to equal health.

**SUGGESTED ANSWER:**

- (A) PHILIPPINE BLOOMING MILLS EMPLOYEES ORGANIZATION VS. PHILIPPINE BLOOMING COMPANY INC. SCRA 51 SCRA 189

- 5. Judicial standards of review
- 6. Void-for-vagueness doctrine

**2014 BAR EXAMS**

The void-for-vagueness doctrine is a concept which means that: (1%)

**(A) if a law is vague, then it must be void**

(B) any law which could not be understood by laymen is a nullity

(C) if a law is incomprehensible to ordinary people such that they do not really know what is required or prohibited, then the law must be struck down

(D) a government regulation that lacks clear standards is nonsensical and useless as a guide for human conduct

(E) clarity in legal language is a mandate of due process.

**SUGGESTED ANSWER:**

- (B) If a law is incomprehensible to ordinary people such that they do not really know what is required or prohibited, then the law must be struck down.

- D. Equal protection  
1. Concept

**2013 BAR EXAMS**

I. The equal protection clause is violated by \_\_\_\_\_. (1%)

(A) a law prohibiting motorcycles from plying on limited access highways.

(B) a law granting Value Added Tax exemption to electric cooperatives that sells electricity to the “homeless poor.”

**(C) a law providing that a policeman shall be preventively suspended until the termination of a criminal case against him.**

(D) a law providing higher salaries to teachers in public schools who are “foreign hires.”

(E) a law that grants rights to local Filipino workers but denies the same rights to overseas Filipino workers.

**SUGGESTED ANSWER:**

**(A)** International School Alliance of Educator’s v. Quisumbing, G.R. 128845, June 1, 2000, 333 SCRA 13)

2. Requisites for valid classification

3. Standards of judicial review

a) Rational Basis Test

b) Strict Scrutiny Test

c) Intermediate Scrutiny Test

E. Searches and seizures

1. Concept

2. Warrant requirement

a) Requisites

3. Warrantless searches

**2012 BAR EXAMS**

Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and dangerous and he identifies himself and makes reasonable inquiries, but nothing serves to dispel his reasonable fear for his own or other’s safety, he is entitled to conduct a carefully limited search of the outer clothing of such persons for weapons. Such search is constitutionally permissible and is known as a:

a. stop and search;

**b. stop and frisk;**

c. stop and interrogate;

d. stop and detain.

**SUGGESTED ANSWER:**

(B) TERRY VS. OHIO, 392 U.S.1

**2012 BAR EXAMS**

a. xxx;

b. xxx;

c. When can evidence "in plain view" be seized without need of a search warrant? Explain. (2%)

**SUGGESTED ANSWER:**

C. Evidence in plain view can be seized without need of a search warrant if the following elements are present.

1. There was a prior valid intrusion based on the valid warrantless arrest in which the police were legally present pursuant of their duties;

2. The evidence was inadvertently discovered by the police who had the right to be where they were:

3. The evidence must be immediately apparent; and

4. Plain view justified seizure of the evidence without further search. (del rosario vs. People, 358 scra 372)

4. Warrantless arrests

**2012 BAR EXAMS**

It is form of entrapment. The method is for an officer to pose as a buyer. He, however, neither instigates nor induces the accused to commit a crime because in these cases, the "seller" has already decided to commit a crime. The offense happens right before the eyes of the officer. Under these circumstances:

a. there is a need for an administrative but not a judicial warrant for seizure of goods and arrest of the offender;

b. there is need for a warrant for the seizure of the goods and for the arrest of the offender;

**c. there is no need for a warrant either for the seizure of the goods or for the arrest of the offender;**

d. the offender can be arrested but there is a need for a separate warrant for the seizure of the goods.

**SUGGESTED ANSWER:**

(c) PEOPLE VS BOHOL, 560 SCRA 232

5. Administrative arrests
6. Drug, alcohol and blood tests

F. Privacy of communications and correspondence

**2012 BAR EXAMS**

Under Article III, Section 2 of the Bill of Rights, which provides for the exclusion of evidence that violate the right to privacy of communication and correspondence, to come under the exclusionary rule, the evidence must be obtained by:

- a. private individuals acting on their own;
- b. government agents;**
- c. private individuals acting on orders of superiors;
- d. former high government officials.

**SUGGESTED ANSWER:**

(B) PEOPLE VS. ALBOFERA, 152 SCRA 123

1. Private and public communications
2. Intrusion, when allowed
3. Writ of *habeas data*

G. Freedom of expression

1. Concept and scope

**2012 BAR EXAMS**

"Chilling effect" is a concept used in the area of constitutional litigation affecting:

- a. protected speech;**
- b. protected executive privilege;
- c. protected legislative discretion;
- d. protected judicial discretion

**SUGGESTED ANSWER:**

(A) CHAVEZ VS. GONZALES, 545 SCRA 411

**2012 BAR EXAMS**

In a protest rally' along Padre Faura Street, Manila, Pedrong Pula took up the stage and began shouting "kayong mga kurakot kayo! Magsi-resign na kayo! Kung hindi, manggugulo kami dito!" ("you corrupt officials, you better resign now, or else we will cause trouble here!") simultaneously, he brought out a rock the size of a fist and pretended to hurl it at the flagpole area of a government building. He did not actually throw the rock.

- a. Police officers who were monitoring the situation immediately approached Pedrong Pula and arrested him. He was prosecuted for seditious speech and was convicted. On appeal, Pedrong Pula argued he was merely exercising his freedom of speech and freedom of expression guaranteed by the Bill of Rights. Decide with reasons. (5%)
- b. xxx;
- c. What are the two (2) basic prohibitions of the freedom of speech and of the press clause? Explain. (2%)

**SUGGESTED ANSWER:**

- A. Pedrong Pula should be acquitted, his freedom of speech should not be limited in the absence of a clear and present danger of a substantive evil that the state had the right to prevent. He pretended to hurl a rock but did not actually throw it. He did not commit any act of lawless violence. (David Vs. Macapagal Arroyo, 489 Scra 160)
- B. xxx
- C. The two basic prohibitions on freedom of speech and freedom of the press are prior restraint and subsequent punishment. (Chavez Vs Gonzales, 545 Scra 411)

**2012 BAR EXAMS**

The complementing regime that best characterizes the guarantees of freedom of speech and of the press are:

- a. prior punishment and moderate punishment;
- b. prior censorship and subsequent remedies;
- c. no prior restraint and subsequent punishment;
- d. no prior restraint and no subsequent punishment.**

**SUGGESTED ANSWER:**

(D) CHAVEZ VS GONZALES, 545 SCRA 441

**2014 BAR EXAMS**

Surveys Galore is an outfit involved in conducting nationwide surveys. In one such survey, it asked the people about the degree of trust and confidence they had in several institutions of the government. When the results came in, the judiciary was shown to be less trusted than most of the government offices. The results were then published by the mass media. Assension, a trial court judge, felt particularly offended by the news. He then issued a show-cause order against Surveys Galore directing the survey entity to explain why it should not be cited in contempt for coming up with such a survey and publishing the results which were so unflattering and degrading to the dignity of the judiciary. Surveys Galore immediately assailed the show-cause order of Judge Assension, arguing that it is violative of the constitutional guaranty of freedom of expression. Is Surveys Galore's petition meritorious? (4%)

**SUGGESTED ANSWER:**

Yes. Surveys Galore's petition is meritorious.

Unwarranted attacks on the dignity of the courts cannot be disguised as free speech, for the exercise of said right cannot be used to impair the independence and efficiency of courts or public respect therefore and confidence therein . Without the *sub judice* rule and the contempt power, the courts will be powerless to protect their integrity and independence that are essential in the orderly and effective dispensation and administration of justice.

This, of course, is not meant to stifle all forms of criticism against the court. As the third branch of the government, the courts remain accountable to the people. The peoples freedom to criticize the government includes the right to criticize the courts, their proceedings and decisions. This is the principle of open justice, which is fundamental to our democratic society and ensures that (a) there is a safeguard against judicial arbitrariness or idiosyncrasy, and that (b) the publics confidence in the administration of justice is maintained.<sup>1</sup> The criticism must, however, be fair, made in good faith, and not spill over the walls of decency and propriety. And to enhance the open court principle and allow the people to make fair and reasoned criticism of the courts, the *sub judice* rule excludes from its coverage fair and accurate reports (without comment) of what have actually taken place in open court.

In sum, the court, in a pending litigation, must be shielded from embarrassment or influence in its all-important duty of deciding the case. Any publication pending a suit, reflecting upon the court, the parties, the

officers of the court, the counsel, etc., with reference to the suit, or tending to influence the decision of the controversy, is contempt of court and is punishable. The resulting (but temporary) curtailment of speech because of the *sub judice* rule is necessary and justified by the more compelling interests to uphold the rights of the accused and promote the fair and orderly administration of justice.

However, in the case of *Surveys Galore* there is no pending case before the court. Thus, the *subjudice* rule does not apply. *Surveys Galore's* petition is meritorious.

- a) **Prior restraint (censorship)**

## **2014 BAR EXAMS**

The guarantee of freedom of expression signifies: (1%)

(A) **absolute freedom to express oneself**

(B) freedom from prior restraint

(C) right to freely speak on anything without limitations

(D) the right of the government to regulate speech

(E) the right of broadcast stations to air any program.

## **SUGGESTED ANSWER:**

(A) Freedom from prior restraint

- b) **Subsequent punishment**
2. **Content-based and content-neutral regulations**
- a) **Tests**
- b) **Applications**
3. **Facial challenges and the overbreadth doctrine**

## **2012 BAR EXAMS**

- a. What is the doctrine of "overbreadth"? In what context can it be correctly applied? Not correctly applied? Explain (5%)
- b. What is the doctrine of "void for vagueness"? In what context can it be correctly applied? Not correctly applied? Explain (5%)

### **SUGGESTED ANSWER:**

- a. A Statement Is Overbroad When A Governmental Purpose To Control Or Prevent Activities Constitutionally Subject To State Regulations Is Sought To Be Achieved By Means Which Sweep Unnecessarily Broadly And Invade The Area Of Protected Freedom. It Applies Both To Free Speech Case And Penal Statutes. However, A Facial Challenge On The Ground Of Overbreadth Can Only Be Made In Free Speech Cases Because Of Its Chilling Effect Upon Protected Speech. A Facial Challenge On The Ground Of Overbreadth Is Not Applicable To Challenge On The Ground Of Overbreadth Is Not Applicable To Penal Statutes, Because In General They Have An In Terrorem Effect. (Southern Hemisphere Engagement Network, Inc. Vs Anti Terrorism Council, 632 Scra 146.)  
Note: The Word “Overbreath” Should Read “Overbreadth” Because Breath Has No Limit Especially If It Is Bad Breath.
- b. A Statute Is Vague When It Lacks Comprehensible Standards That Men Of Common Intelligence That Guess Its Meaning And Differ As To Its Application. Its Applies To Both Free Speech Cases And Penal Statues. However, A Facial Challenge On The Ground Of Vagueness Can Be Made Only In Free Speech Cases. It Does Not Apply To Penal Statutes. (Southern Hemisphere Engagement Network, Inc. Vs. Anti- Terrorism Council, 632 Scra 146.)

### **2014 BAR EXAMS**

In keeping with the modern age of instant and incessant information and transformation, Congress passed Cybercrime Prevention Act to regulate access to and use of the amenities of the cyberspace. While ostensibly the law is intended to protect the interests of society, some of its provisions were also seen as impermissibly invading and impairing widely cherished liberties of the people particularly the freedom of expression. Before the law could even be implemented, petitions were filed in the Supreme Court questioning said provisions by people who felt threatened, for themselves as well as for the benefit of others who may be similarly affected but not minded enough to challenge the law. The Solicitor General countered that there is no basis for the exercise of the power of judicial review since there has yet been no violation of the law, and therefore, there is no actual case or controversy to speak of, aside from the fact that the petitioners have no locus standi since they do not claim to be in imminent danger of being prosecuted under the law. Can the Court proceed to decide the case even if the law has not yet become effective? (4%)

## **SUGGESTED ANSWER:**

The Supreme Court can proceed to decide the case even if the law has not yet become effective. Since the petitions filed sought to nullify the Cybercrime Prevention Act, Because it violated several provisions of the Bill of Rights, the Supreme Court became duty-bound to settle the dispute (Tanada v. Angara, 272 SCRA 18 (1997)). Since it is alleged that the CYbercrime Prevention Act violates various provisions of the Bill of Rights, including freedom of speech, freedom of the press, and the right against unreasonable searches and seizures, the issues raised are of paramount public interest of transcendental importance and with far-reaching constitutional implications that justify dispensation with locus standi and exercise of the power of judicial review by the Supreme Court (Chavez v. Gonzalesm 545 Scra 441 (2008)). Jurisprudence provides that locus standi is not required when the action was filed to prevent a chilling effect on the exercise of the right to freedom of expression and overbreadth.

## **2014 BAR EXAMS**

The overbreadth doctrine posits that the government: (1%)

**(A) must know the extent of its power**

(B) when it exercises too much power it is like someone with bad breath – it is not healthy to society

(C) can enact laws which can reach outside its borders, like long-arm statues

(D) the government is prohibited in banning unprotected speech if a substantial amount of protected speech is restrained or chilled in the process

## **SUGGESTED ANSWER:**

- (A) The government is prohibited in banning unprotected speech if a substantial amount of protected speech is restrained or chilled in the process.

### **2015 BAR EXAMS**

When is a facial challenge to the constitutionality of a law on the ground of violation of the Bill of Rights traditionally allowed? Explain your answer. (3%)

#### **ANSWER:**

“In United States (US) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only protected speech, but also all other rights in the First Amendment.

This include religious freedom, freedom of the press, and the rights of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one’s freedom of expression, as they are modes which one’s thoughts are externalized.

“In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamentals rights. The underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.” (Imbong v. Ochoa, G.R. No. 204819, April 8, 2014, 721 SCRA 146)

The Gay, Bisexual and Transgender Youth Association (GBTYA), an organization of gay, bisexual, and transgender persons, filed for accreditation with the COMELEC to join the forthcoming party-list elections. The COMELEC denied the application for accreditation on the ground that GBTY A espouses immorality which offends religious dogmas. GBTY A challenges the denial of its application based on moral grounds because it violates its right to equal protection of the law. (I) What are the three (3) levels of test that are applied in equal protection cases? Explain.

(3%) (2) Which of the three (3) levels of test should be applied to the present case? Explain. (3%)

4. Tests

**2012 BAR EXAMS**

Which one of the following is not a proper test in cases of challenges to governmental acts that may violate protected speech:

- a. clear and present danger;
- b. balancing of interests;
- c. reasonable relation;
- d. dangerous tendency.**

**SUGGESTED ANSWER:**

(D) CHAVEZ VS. GONZALES, 545 SCRA 411

5. State regulation of different types of mass media

6. Commercial speech

**2012 BAR EXAMS**

Commercial speech is entitled to:

- a. more protection compared to other constitutionally guaranteed expression;
- b. equal protection compared to other constitutionally guaranteed expression;
- c. lesser protection compared to other constitutionally guaranteed expression;**
- d. none of the above.

**SUGGESTED ANSWER:**

(C) IGLESIA NI CRISTO VS. COURT OF APPEALS, 259 SCRA 529

**2012 BAR EXAMS**

In a protest rally' along Padre Faura Street, Manila, Pedrong Pula took up the stage and began shouting "kayong mga kurakot kayo! Magsi-resign na

kayo! Kung hindi, manggugulo kami dito!" ("you corrupt officials, you better resign now, or else we will cause trouble here!") simultaneously, he brought out a rock the size of a fist and pretended to hurl it at the flagpole area of a government building. He did not actually throw the rock.

- a. xxx;
- b. What is "commercial speech"? Is it entitled to constitutional protection? What must be shown in order for government to curtail "commercial speech"? Explain. (3%)
- c. xxx

**SUGGESTED ANSWER:**

B. Commercial speech is communication which involves only the commercial interests of the speaker and the audience such as advertisements. ( Black's Law Dictionary, 9<sup>th</sup> Ed.,P. 1529)

Commercial speech is entitled to constitutional protection. (Ayer Productions Pty., Ltd Vs Capulong, 160 Scra 861.)

Commercial speech may be required to be submitted to a government agency for review to protect public interest by preventing false or deceptive claims. (Pharmaceutical And Health Care Association Of The Philippines Vs. Duque, 535 Scra 265.)

7. Private vs. government speech

**2012 BAR EXAMS**

No liability can attach to a false, defamatory statement if it relates to official conduct, unless the public official concerned proves that the statement was with knowledge that it was false or with reckless disregard of whether it was false or not. This is known as what rule?

- a. libel malice rule;
- b. actual malice rule;**
- c. malice in fact rule;
- d. legal malice rule.

**SUGGESTED ANSWER:**

(B) VASQUEZ VS. COURT OF APPEALS , 314 SCRA 460

**2012 BAR EXAMS**

In the law of libel and protected speech, a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a:

- a. public figure;**

- b. celebrity;
- c. public official;
- d. de facto public officer.

**SUGGESTED ANSWER:**

(A) AYERS PRODUCTION PTY., LTD VS CAPULONG, 160 SCRA 861

H. 8. Heckler's veto  
Freedom of religion

**2012 BAR EXAMS**

The free exercise and non-establishment clauses pertain to which right under the Bill of Rights:

- a. liberty of movement;
- b. liberty of abode;
- c. religion;**
- d. life and liberty.

**SUGGESTED ANSWER:**

(C) SECTION 5, ARTICLE III OF CONSTITUTION

1. Non-establishment clause  
a) Concept and basis

**2012 BAR EXAMS**

The Constitution provides that the "separation of church and state shall be inviolable." This is implemented most by the constitutional principles embodied in:

- a. the free exercise clause;
- b. the non-establishment clause;**
- c. . the freedom of religious belief clause;

- d. the freedom of religion clause.

**SUGGESTED ANSWER;**

B. SECTION 5, ARTICLE III OF CONSTITUTION

**2012 BAR EXAMS**

- a. xxx;
- b. Distinguish fully between the "free exercise of religion clause" and the "non-establishment of religion clause". (3%)
- c. xxx

**SUGGESTED ANSWER:**

B. The freedom of exercise of religion entails the right to believe, which is absolute, and the right to act on one's belief , which is subject to regulation. As a rule , the freedom of exercise of religion can be restricted only if there is a clear and present danger of a substantive evil which the state has the right to prevent. (iglesia ni cristo vs. Court of appeals, 259 scra 529.)

The non establishment clause implements the principle of seperation of church and state. The state cannot set up a church. Pass laws that aid one religion, and all religions, prefer one religion over another force or influence a person to go to or remain away from church against his will, of force him to profess a belief or disbelief in any religion. (everson vs. Board of education, 330 u.s 1.)

- b) Acts permitted and not permitted by the clause
- c) Test

2. Free exercise clause

**2012 BAR EXAMS**

- a. xxx;
- b. Distinguish fully between the "free exercise of religion clause" and the "non-establishment of religion clause". (3%)
- c. xxx

**SUGGESTED ANSWER:**

B. The freedom of exercise of religion entails the right to believe, which is absolute, and the right to act on one's belief , which is subject to regulation. As a rule , the freedom of exercise of religion can be restricted only if there is a clear and present danger of a substantive evil which the state has the right to prevent. (iglesia ni cristo vs. Court of appeals, 259 scra 529.)

The non establishment clause implements the principle of separation of church and state. The state cannot set up a church. Pass laws that aid one religion, and all religions, prefer one religion over another force or influence a person to go to or remain away from church against his will, or force him to profess a belief or disbelief in any religion. (Everson vs. Board of Education, 330 U.S. 1.)

3. Tests

a) Clear and Present Danger Test

**2012 BAR EXAMS**

The Gangnam Style's Witnesses (whose tenets are derogatory to the Catholic Church), applied for a permit to use the public plaza and kiosk to hold their religious meeting on the occasion of their founding anniversary. Mayor Lebron allowed them to use the north-western part of the plaza but not the kiosk (which is a few meters away from the Catholic church). Members of the Gangnam Style Witnesses claim that the act of Mayor Lebron is a violation of their freedom of assembly and religion. Is this correct?

a. No, because this is valid exercise of police power;

b. Yes, because the plaza being of public use can be used by anybody regardless of religious belief;

**c. No, because historical experience shows that peace and order may be disturbed whenever two opposing religious groups or beliefs expound their dogmas;**

d. Yes, because there is no clear and present danger in holding a religious meeting by another religious group near a Catholic church.

**SUGGESTED ANSWER:**

(C) Ignacio vs. Dela Cruz, 99 Phil. 346; and (d) Iglesia ni Cristo vs. Court of Appeals, 259 SCRA 529.

It is suggested that either (c) or (d) may be accepted as a correct answer

**2014 BAR EXAMS**

Allmighty Apostles is a relatively new religious group and movement with fast-growing membership. One time, DeepThroat, an investigative reporter, made a research and study as to what the group's leader, Maskeraid was actually doing. DeepThroat eventually came up with the conclusion that Maskeraid was a phony who is just fooling the simple-minded people to part with their money in exchange for the promise of

eternal happiness in some far-away heaven. This was published in a newspaper which caused much agitation among the followers of Maskeraid. Some threatened violence against DeepThroat, while some others already started destroying properties while hurting those selling the newspaper. The local authorities, afraid of the public disorder that such followers might do, decided to ban the distribution of the newspaper containing the article. DeepThroat went to court complaining about the prohibition placed on the dissemination of his article. He claims that the act of the authorities partakes of the nature of heckler's veto, thus a violation of the guaranty of press freedom. On the other hand, the authorities counter that the act was necessary to protect the public order and the greater interest of the community. If you were the judge, how would you resolve the issue? (4%)

**SUGGESTED ANSWER:**

If I were the judge, I would rule that the distribution of the newspaper cannot be banned. Freedom of the news should be allowed although it induces a condition of unrest and stirs people to anger. Freedom of the press includes freedom of circulation (Chavez v. Gonzales, 545 SCRA 441 (2008)).

When governmental action that restricts freedom of the press is based on content, it is given the strictest scrutiny and the government must show that there is a clear and present danger of the substantive evil which the government has the right to prevent. The threats of violence and even the destruction of properties while hurting those selling the newspaper do not constitute a clear and present danger as to warrant curtailment of the right of Deep Throat to distribute the newspaper (Chavez v. Gonzales 545 SCRA 441 (2008))

**ALTERNATIVE ANSWER:**

The action of the government is justified.

The fact that some people had already started destroying properties while hurting those selling the newspaper can be validly considered by the government as a clear and present danger, which will justify its banning of

the further distribution of the newspaper containing the article. The test for limitations on freedom of expression continues to be the clear and present danger rule-that words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the lawmaker has a right to prevent (Chavez vs. Gonzales, 545 SCRA 441 92008).

b) **Compelling State Interest Test**

**2013 BAR EXAMS**

Candida has been administratively charged of immorality for openly living with Manuel, a married man. Candida urges that her conjugal arrangement with Manuel fully conforms with their religious beliefs and with the teachings of their church.

In resolving whether Candida should be administratively penalized which is the best test to apply? (1%)

(A) Clear and Present Danger Test

**(B) Compelling State Interest Test**

(C) Balancing of Interests Test

(D) Conscientious Objector Test

(E) Dangerous Tendency Test

**SUGGESTED ANSWER:**

(B)(Estrada v. Escritor, A.M.No. P-02-1651, August 4, 2003, 492 SCRA 1)

c) **Conscientious Objector Test**

I. **Liberty of abode and freedom of movement**

1. **Limitations**

## 2012 BAR EXAMS

Mr. Violet was convicted by the RTC of Estafa. On appeal, he filed with the Court of Appeals a Motion to Fix Bail for Provisional Liberty Pending Appeal. The Court of Appeals granted the motion and set a bail amount in the sum of Five (5) Million Pesos, subject to the conditions that he secure "a certification/guaranty from the Mayor of the place of his residence that he is a resident of the area and that he will remain to be a resident therein until final judgment is rendered or in case he transfers residence, it must be with prior notice to the court". Further, he was ordered to surrender his passport to the Division Clerk of Court for safekeeping until the court orders its return.

- a. Mr. Violet challenges the conditions imposed by the Court of Appeals as violative of his liberty of abode and right to travel. Decide with reasons. (5%)
- b. Are "liberty of abode" and "the right to travel" absolute rights? Explain. What are the respective exception/s to each right if any? (5%)

### SUGGESTED ANSWER:

a. the right to change adobe and the right to travel are not absolute. The liberty of changing adobe may be unpaired upon order to the court. The order of the court of appeals is lawful, because the purpose is to ensure that the accused will be available whenever his presence is required. He is not being prevented from changing his adobe. He is merely being required to inform the court of appeals if he does. (YAP vs Court of Appeals, 358 scra 564).

b. The liberty of adobe and the right to travel are not absolute the liberty of adobe and of changing it can be imposed within the limits prescribed by law upon lawful order of the court. The right to travel may be unpaired in the interest of national security, public safety, or public health as may be provided by law. (section 6, article III of the Constitution.)

In addition , the court has the inherent power to restrict the right of an accused who has pending criminal case to travel abroad to maintain its jurisdiction over him. (Santiago vs Vasquez, 217 scra 633.)

2. **Right to travel**
  - a) **Watch-list and hold departure orders**
3. **Return to one's country**

### **J. Right to information**

1. **Limitations**

## 2012 BAR EXAMS

Which one is NOT a recognized limitation to the right to information on matters of public concern:

- a. national security matters;
- b. trade secrets and banking transactions;
- c. criminal matters or classified law enforcement matters;
- d. government research data used as a basis for policy development.**

**SUGGESTED ANSWER:**

(D) SECTION 7, ARTICLE III OF CONSTITUTION

- 2. Publication of laws and regulations
- 3. Access to court records
- 4. Right to information relative to:
  - a) Government contract negotiations
  - b) Diplomatic negotiations

**K. Right of association**

**L. Eminent domain**

- 1. Concept

**2012 BAR EXAMS**

Which one of the following circumstances is NOT an element of taking under eminent domain:

- a. entering upon public property for a momentary period;**
- b. under color of legal authority;
- c. devoting it to public use;
- d. as substantially to oust the owner of all beneficial ownership.

**SUGGESTED ANSWER:**

(A) REPUBLIC VS. CASTELLVI, 58 SCRA 336

- 2. Expansive concept of "public use"
- 3. Just compensation
  - a) Determination

**2012 BAR EXAMS**

Market value for purposes of determining just compensation in eminent domain has been described as the fair value of property:

- a. between one who desires to purchase and one does not desire to sell;
- b. between one who desires to purchase and one who wants to delay selling;
- c. between one who desires to purchase and one who desires to sell;**
- d. between one who desires to purchase on terms and one who desires to sell after a period of time.

**SUGGESTED ANSWER:**

(C) CITY OF MANILA VS. ESTRADA, 25 PHIL. 208

- b) Effect of delay

**2014 BAR EXAMS**

The National Power and Grid Corporation (NPGC), a government entity involved in power generation distribution, had its transmission lines traverse some fields belonging to Farmerjoe. NPGC did so without instituting any expropriation proceedings. Farmerjoe, not knowing any better, did not immediately press his claim for payment until after ten years later when a son of his took up Law and told him that he had a right to claim compensation. That was then the only time that Farmerjoe earnestly demanded payment. When the NPGC ignored him, he instituted a case for payment of just compensation. In defense, NPGC pointed out that the claim had already prescribed since under its Charter it is clearly provided that "actions for damages must be filed within five years after the rights of way, transmission lines, substations, plants or other facilities shall have been established and that after said period, no suit shall be brought to question the said rights of way, transmission lines, substations, plants or other facilities." If you were the lawyer of Farmerjoe, how would you protect and vindicate the rights of your client? (4%)

**SUGGESTED ANSWER:**

As held in NATIONAL POWER CORPORATION v. SPOUSES BERNARDO AND MINDALUZ SALUDARES G. R. No. 189127, April 25, 2012; the right to recover just compensation is enshrined in no less than our Bill of Rights, which states in clear and categorical language that private property shall not be taken for public use without just compensation. This constitutional mandate cannot be defeated by statutory prescription.

Thus, It would be a confiscatory act on the part of the government to take the property of respondent spouses for a public purpose and deprive them of their right to just compensation, solely because they failed to institute

inverse condemnation proceedings within five years from the time the transmission lines were constructed.

4. Abandonment of intended use and right of repurchase
5. Miscellaneous application

**M. Contract clause**

1. Contemporary application of the contract clause

**N. Legal assistance and free access to courts**

**O. Rights of suspects**

1. Availability

**2012 BAR EXAMS**

Under Article III, Section 12 of the Constitution, any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent, etc. The investigation referred to is called:

**a. preliminary investigation;**

b. summary investigation;

c. criminal investigation;

d. custodial investigation.

**SUGGESTED ANSWER:**

(A) People vs Sunga, 339 scra 624; (c) Galman vs. Pamaran 138 SCRA 294; and (d) Section 12, Article iii of Constitution

**SUGGESTED ANSWER:**

(B) KHETIN VS. VILLAREAL, 42 PHIL. 886

**2012 BAR EXAMS**

Mr. Brown, a cigarette vendor, was invited by PO1 White to a nearby police station. Upon arriving at the police station, Brown was asked to stand side-by-side with five (5) other cigarette vendors in a police line-up. PO1 White informed them that they were looking for a certain cigarette vendor who snatched the purse of a passer-by and the line-up was to allow the victim to point at the vendor who snatched her purse. No questions were to be asked from the vendors.

- a. Brown, afraid of a "set up" against him, demanded that he be allowed to secure his lawyer and for him to be present during the police line-up. Is Brown entitled to counsel? Explain (5%)

- b. Would the answer in (a.) be the same if Brown was specifically invited by White because an eyewitness to the crime identified him as the perpetrator? Explain. (3%)
- c. Briefly enumerate the so-called "Miranda Rights". (2%)

**SUGGESTED ANSWER:**

- A. Brown is not entitled to counsel during the police line up. He was not yet being asked to answer for a criminal offense. (garaboa vs. Cruzm 162 scra 642.)
- B. Brown would be entitled to the assistance of a lawyer. He was already considered as a suspect and was therefore entitled to the right under custodial investigation. (People vs Legaspi, 331 scra 95.);
- C. The Miranda warning means that a person in custody who will be interrogated must be informed of the following.
  - 1. He has right to remain silent.
  - 2. anything said can be used as evidence against him;
  - 3. he has the right to have counsel during the investigation; and
  - 4. he must be informed that if he is indigent, a lawyer will be appointed to represent him. (Miranda vs. Arizona , 384 U.S 436)

**2013 BAR EXAMS**

A robbery with homicide had taken place and Lito, Badong, and Rollie were invited for questioning based on the information furnished by a neighbor that he saw them come out of the victim's house at the time of the robbery/killing. The police confronted the three with this and other information they had gathered, and pointedly accused them of committing the crime.

Lito initially resisted, but eventually broke down and admitted his participation in the crime. Elated by this break and desirous of securing a written confession soonest, the police called City Attorney Juan Buan to serve as the trio's counsel and to advise them about their rights during the investigation.

Badong and Rollie, weakened in spirit by Lito's early admission, likewise admitted their participation. The trio thus signed a joint extrajudicial confession which served as the main evidence against them at their trial. They were convicted based on their confession.

Should the judgment of conviction be affirmed or reversed on appeal? (5%)

**SUGGESTED ANSWER:**

The judgment of conviction should be reversed on appeal. It relied mainly on the extra judicial confession of the accused. The lawyer assisting them must be independent. City Attorney Juan Buan is not independent. As City Attorney, he provided legal support to the City Mayor in performing his duties which include the maintenance of peace and order (People v. Sunga, 399 SCRA 624).

**ALTERNATIVE ANSWER:**

The judgment of conviction should be affirmed if the accused failed to object when their extrajudicial confession was offered in evidence which was rendered it admissible (People v. Samus, 389 SCRA 93).

**2014 BAR EXAMS**

The police got a report about a shooting incident during a town fiesta. One person was killed. The police immediately went to the scene and started asking the people about what they witnessed. In due time, they were pointed to Edward Gunman, a security guard, as the possible malefactor. Edward was then having refreshment in one of the eateries when the police approached him. They asked him if he had a gun to which question he answered yes. Then they asked if he had seen anybody shot in the vicinity just a few minutes earlier and this time he said he did not know about it. After a few more questions, one of the policemen asked Edward if he was the shooter. He said no, but then the policeman who asked him told him that several witnesses pointed to him as the shooter. Whereupon Edward broke down and started explaining that it was a matter of self-defense. Edward was eventually charged with murder. During his trial, the statements he made to the police were introduced as evidence against him. He objected claiming that they were inadmissible since he was not given his Miranda rights. On the other hand, the prosecution countered that there was no need for such rights to be given since he was not yet arrested at the time of the questioning. If you were the judge, how would you rule on the issue? (4%)

**SUGGESTED ANSWER:**

I would rule in favour of Edward. The statements made are inadmissible. It was made in violation of the constitutional rights of Edwards.

Custodial investigation refers to any questioning initiated by law enforcement officers after a person has been taken into custody. The rights are available when the person interrogated is already treated as a *particular suspect* and the investigation is no longer a general inquiry into an unsolved crime. However, during this stage, no complaint or criminal case has been filed yet. As such, the person suspected to have committed a crime is not yet an accused, since no case was instituted against him.

However, in the case of Edward, the questioning made was more than just a general inquiry into an unsolved crime. It was already in the accusatory stage in which the Miranda rights must be given to the accused.

### **2013 BAR EXAMS**

As he was entering a bar, Arnold — who was holding an unlit cigarette in this right hand — was handed a match box by someone standing near the doorway. Arnold unthinkingly opened the matchbox to light his cigarette and as he did so, a sprinkle of dried leaves fell out, which the guard noticed. The guard immediately frisked Arnold, grabbed the matchbox, and sniffed its contents. After confirming that the matchbox contained marijuana, he immediately arrested Arnold and called in the police.

At the police station, the guard narrated to the police that he personally caught Arnold in possession of dried marijuana leaves. Arnold did not contest the guard's statement; he steadfastly remained silent and refused to give any written statement. Later in court, the guard testified and narrated the statements he gave the police over Arnold's counsel's objections. While Arnold presented his own witnesses to prove that his possession and apprehension had been set-up, he himself did not testify.

The court convicted Arnold, relying largely on his admission of the charge by silence at the police investigation and during trial.

From the constitutional law perspective, was the court correct in its ruling? (6%)

#### **SUGGESTED ANSWER:**

The court was wrong in relying on the silence of Arnold during the police investigation and during the trial. Under Article III, Section 12 of the 1987 Constitution, he had the right to remain silent. His silence cannot be taken as a tacit admission, otherwise, his right to remain silent would be rendered nugatory. Considering that his right against self-incrimination protects his right to remain silent, he cannot be penalized for exercising it (People v. Galvez, G.R. No. 157221, March 30, 2007, 519 SCRA 521).

#### **ALTERNATIVE ANSWER:**

The court correctly convicted Arnold. There is no showing that the evidence for the prosecution was insufficient. When Arnold remained silent, he runs the risk of an interference of guilt from non-production of evidence in his behalf (People v. Solis G.R. No. 124127, June 29, 1998, 128 SCRA 217).

2. **Requisites**
3. **Waiver**

### **P. Rights of the accused**

1. **Criminal due process**
2. **Bail**

### **2012 BAR EXAMS**

All persons charged shall, before conviction, be bailable by sufficient sureties, except those charged with:

- a. offenses punishable by death when evidence of guilt is strong;
- b. offenses punishable by life imprisonment when evidence of guilt is strong;
- c. offenses punishable by death when evidence of guilt is weak;
- d. offenses punishable by reclusion perpetua when evidence of guilt is strong.**

**SUGGESTED ANSWER:**

(D) SECTION 13, ARTICLE III OF CONSTITUTION

- 3. Presumption of innocence
- 4. Right to be heard
- 5. Assistance of counsel

**2012 BAR EXAMS**

Accused was charged with slight illegal detention. On the day set for the trial, the trial court proceeded as follows:

"Court: to  
the  
accused:

Q: "Do you have an attorney or are you going to plead guilty?"

A: "I have no lawyer and i will plead guilty."

Accused was then arraigned, pleaded guilty, was found guilty and sentenced. On appeal, the Supreme Court reversed. The accused was deprived of his:

- a. right to cross-examination;
- b. right to be presumed innocent;
- c. right to counsel;**
- d. right to production of evidence.

**SUGGESTED ANSWER:**

(C) PEOPLE VS HOLGADO, 85 PHIL 752

- 6. Right to be informed
- 7. Right to speedy, impartial and public trial

8. Right of confrontation

**2012 BAR EXAMS**

The constitutional right of an accused "to meet the witnesses face to face" is primarily for the purpose of affording the accused an opportunity to:

- a. identify the witness;
- b. cross-examine the witness;**
- c. be informed of the witness;
- d. be heard.

**SUGGESTED ANSWER:**

(A) PEOPLE VS. MONTINEGRO, 436 SCRA 33

9. Compulsory process

10. Trials *in absentia*

**2012 BAR EXAMS**

Criminal trial may proceed, notwithstanding the absence of the accused provided that he has been duly notified, and his failure to appear is unjustifiable, after:

- a. preliminary investigation;
- b. arraignment;**
- c. sentencing;
- d. prosecution has rested its case.

**SUGGESTED ANSWER:**

(B) SECTION 19, ARTICLE III OF CONSTITUTION

**2012 BAR EXAMS**

The requisites of a valid trial in absentia exclude:

- a. Wherein his/her failure to appear is unjustifiable;
- b. Wherein he/she allows himself/herself to be identified by the witness in his/her absence, without further unqualified admitting that**

**every time a witness mentions a name by which he/she is known, it shall be understood to refer to him/her;**

- c. Wherein he/she has been duly notified of the trial;
- d. Wherein the accused has already been arraigned.

**SUGGESTED ANSWER:**

(B) CARREDO VS. PEOPLE, 183 SCRA 373

**Q. Writ of *habeas corpus***

**2012 BAR EXAMS**

The privilege of the writ of habeas corpus shall not be suspended except in cases of:

- a. imminent danger of invasion or rebellion when the public safety requires it;
- b. grave danger of invasion or rebellion when the public safety requires it;
- c. clear and present danger of invasion or rebellion when the public safety requires it;
- d. invasion or rebellion when the public safety requires it.**

**SUGGESTED ANSWER:**

(D) SECTION 18, ARTICLE VII OF CONSTITUTION

**R. Writs of *amparo*, *habeas data*, and *kalikasan***

**2013 BAR EXAMS**

Conrad is widely known in the neighborhood as a drug addict. He is also suspected of being a member of the notorious “Akyat-Condo Gang” that has previously broken into and looted condominium units in the area.

Retired Army Colonel Sangre — who is known as an anti-terrorism fighter who disclaimed human and constitutional rights and has been nicknamed “terror of Mindanao” — is now the Head of Security of Capricorn Land Corporation, the owner and developer of Sagittarius Estates where a series of robberies has recently taken place.

On March 1, 2013, Conrad informed his mother, Vannie, that uniformed security guards had invited him for a talk in their office but he refused to come. Later that day, however, Conrad appeared to have relented; he was seen walking into the security office flanked by two security guards. Nobody saw him leave the office afterwards.

Conrad did not go home that night and was never seen again. The following week and after a week-long search, Vannie feared the worst because of Col. Sangre's reputation. She thus reported Conrad's disappearance to the police. When nothing concrete resulted from the police investigation, Vannie — a the advice of counsel — filed a petition for a writ of amparo to compel Col. Sangre and the Sagittarius Security Office to produce Conrad and to hold them liable and responsible for Conrad's disappearance.

(A) Did Vannie's counsel give the correct legal advice? (6%)

(B) If the petition would prosper, can Col. Sangre be held liable and/or responsible for Conrad's disappearance? (6%)

**SUGGESTED ANSWER:**

- (A) The advice of Vannie's counsel that she file a petition for a writ of amparo is not correct. In order that a writ of amparo can be availed of against a private individual for the disappearance of someone, the involvement of the government is indispensable. There is no shoeing of any participation of the government in Conrad's disappearance (Navia v. Pardico, G.R. No. 184467, June 19, 2012, 673 SCRA 618).

**SUGGESTED ANSWER:**

- (B) No, Col. Sangre cannot be held responsible for the disappearance of Conrad. Command responsibility has no applicability to an amparo proceeding (Rubrico v. Macapagal-Arroyo, G.R. No. 183871, February 18, 2010., 613 SCRA 233). It may be established merely to enable the court to craft the appropriate remedies against the responsible parties (Balao v. macapagal-Arroyo, G.R. No. 186050, December 13, 2011, 662 SCRA 312).

**ALTERNATIVE ANSWER:**

Although the writ of amparo does not pinpoint criminal culpability for a disappearance, it determines responsibility, for the purpose of imposing the appropriate remedy. Responsibility refers to the extent the actors have been established to have participated in an enforced disappearance, as a measure of the remedy, to be crafted, such as the directive to file the appropriate criminal and civil cases against the responsible parties (Razon Jr. v. Tagitis, G.R. No. 182498, December 3, 2009, 606 SCRA 598).

**S. Self-incrimination clause**

1. **Scope and coverage**

**2013 BAR EXAMS**

The right of the state to prosecute crimes by available evidence must yield to the right of

**A. the accused against self- incrimination.**

- B. another state to extradite a fugitive from justice.
- C. the state to deport undesirable aliens.
- D. the complainant to drop the case against the accused

### **2012 BAR EXAMS**

The right of the accused against self-incrimination will be violated if:

a. he is charged with violation of the Anti-Money Laundering Act and he was required to produce his bank passbook;

**b. he is a public officer charged with amassing ill-gotten wealth and his statement of assets and liabilities will be presented as evidence;**

c. his gun was subjected to a ballistics test;

d. a sample of his blood was taken if his blood type matches the blood type found at the scene of the crime.

### **2013 BAR EXAMS**

As he was entering a bar, Arnold — who was holding an unlit cigarette in this right hand — was handed a match box by someone standing near the doorway. Arnold unthinkingly opened the matchbox to light his cigarette and as he did so, a sprinkle of dried leaves fell out, which the guard noticed. The guard immediately frisked Arnold, grabbed the matchbox, and sniffed its contents. After confirming that the matchbox contained marijuana, he immediately arrested Arnold and called in the police.

At the police station, the guard narrated to the police that he personally caught Arnold in possession of dried marijuana leaves. Arnold did not contest the guard's statement; he steadfastly remained silent and refused to give any written statement. Later in court, the guard testified and narrated the statements he gave the police over Arnold's counsel's objections. While Arnold presented his own witnesses to prove that his possession and apprehension had been set-up, he himself did not testify.

The court convicted Arnold, relying largely on his admission of the charge by silence at the police investigation and during trial.

From the constitutional law perspective, was the court correct in its ruling? (6%)

#### **SUGGESTED ANSWER:**

The court was wrong in relying on the silence of Arnold during the police investigation and during the trial. Under Article III, Section 12 of the 1987 Constitution, he had the right to remain silent. His silence cannot be taken as a tacit admission, otherwise, his right to remain silent would be rendered nugatory. Considering that his right against self-incrimination protects his right to remain silent, he cannot be penalized for exercising it (People v. Galvez, G.R. No. 157221, March 30, 2007, 519 SCRA 521).

**ALTERNATIVE ANSWER:**

The court correctly convicted Arnold. There is no showing that the evidence for the prosecution was insufficient. When Arnold remained silent, he runs the risk of an interference of guilt from non-production of evidence in his behalf (People v. Solis G.R. No. 124127, June 29, 1998, 128 SCRA 217).

**2014 BAR EXAMS**

Alienmae is a foreign tourist. She was asked certain questions in regard to a complaint that was filed against her by someone who claimed to have been defrauded by her. Alienmae answered all the questions asked, except in regard to some matters in which she invoked her right against self-incrimination. When she was pressed to elucidate, she said that the questions being asked might tend to elicit incriminating answers insofar as her home state is concerned. Could Alienmae invoke the right against self-incrimination if the fear of incrimination is in regard to her foreign law?

(4%)

**SUGGESTED ANSWER:**

No. Alienmae cannot invoke her right against self-incrimination even if the fear of incrimination is in regard to her foreign law.

Under the territoriality principle, the general rule is that a state has jurisdiction over all persons and property within its territory. The jurisdiction of the nation within its own territory is necessary, exclusive, and absolute. However, there are a few exceptions on when a state cannot exercise jurisdiction even within its own territory, to wit: 1) foreign states, head of states, diplomatic representatives, and consuls to a certain degree; 2) foreign state property; 3) acts of state; 4) foreign merchant vessels exercising rights of innocent passage or arrival under stress; 5) foreign armies passing through or stationed in its territories with its permission; and 6) such other persons or property, including organisations like the United Nations, over which it may, by agreement, waive jurisdiction.

Seeing that the circumstances surrounding Alienmae do not fall under those exceptions, that she is a foreign tourist who received a complaint for fraud, such principle of territoriality can be exercised by the State to get the information it needs to proceed with the case.

- a) **Foreign laws**
- 2. **Application**
- 3. **Immunity statutes**

**T. Involuntary servitude and political prisoners**

**U. Excessive fines and cruel and inhuman punishments**

**2012 BAR EXAMS**

The death penalty shall not be imposed:

a. unless for compelling reasons involving death penalty crimes and the executive hereafter provides for it;

b. unless for compelling reasons involving heinous crimes and a constitutional amendment provides for it;

**c. unless for compelling reasons involving heinous crimes and Congress hereafter provides for it;**

d. unless for compelling reasons involving heinous crimes and the Supreme Court hereafter upholds it.

**SUGGESTED ANSWER:**

(c) SECTION(1) ARTICLE III OF CONSTITUTION

**V. Non-imprisonment for debts**

**W. Double jeopardy**

**2012 BAR EXAMS**

Butchoy installed a jumper cable. He was prosecuted under a Makati ordinance penalizing such act. He moved for its dismissal on the ground that the jumper cable was within the territorial jurisdiction of Mandaluyong and not Makati. The case was dismissed. The City of Mandaluyong thereafter filed a case against him for theft under the Revised Penal Code (RCP). Is there double jeopardy?

a. No. The first jeopardy was terminated with his express consent;

b. Yes. This is double jeopardy of the second kind – prosecution for the same act under an ordinance and a law;

c. Yes. He is prosecuted for the same offense which has already been dismissed by the City of Makati;

**d. No. The second kind of double jeopardy under Section 21, Article III only contemplates conviction or acquittal which could terminate a first jeopardy.**

**SUGGESTED ANSWER:**

(D) Zapatos Vs People, 411 Scra 148

**2012 BAR EXAMS**

In which of the following would there be no double jeopardy even if a subsequent case is filed?

- a. Pot is accused before the RTC of qualified theft. After innumerable postponements against Pot's wishes, he moves for dismissal for denial of the right to a speedy trial. Prosecutor objected. Dismissal granted;
- b. Pot is accused before the RTC of qualified theft. After innumerable postponements against Pot's wishes, the prosecutor moves for dismissal with the consent of Pot. Granted;**
- c. Pot is accused before the RTC of qualified theft. After innumerable postponements against Pot's wishes, he moves for dismissal for denial of the right to a speedy trial. Prosecutor posts no objections. Dismissal granted;
- d. Pot is accused before the RTC of qualified theft. After innumerable postponements against Pot's wishes, the prosecutor moves for dismissal over the objections of Pot. Granted.

**SUGGESTED ANSWER:**

(B) SECTION 8, RULE 117 OF THE RULES ON CRIMINAL PROCEDURE

1. Requisites
2. Motions for reconsideration and appeals
3. Dismissal with consent of accused

**X. Ex post facto laws and bills of attainder**

**2012 BAR EXAMS**

An ex post facto law has been defined as one:

- a. which aggravates a crime or makes it lesser than when it was committed;
- b. which mitigates a crime or makes it lesser than when it was committed;
- c. which aggravates a crime or makes it greater than when it was committed;**
- d. which aggravates a crime or makes it non-criminal after it was committed.

**SUGGESTED ANSWER:**

(C) REPUBLIC VS. EUGENIO, 545 SCRA 384

## 2012 BAR EXAMS

A bill of attainder is:

- a. an executive act which inflicts punishment without tender;
- b. a judicial act which inflicts punishment without tender;
- c. a legislative act which inflicts punishment without trial;**
- d. a legislative act which pardons punishment after tender.

### SUGGESTED ANSWER:

(c) PEOPLE VS. FERREWR, 48 SCRA 382

## VIII. Citizenship

### A. Who are Filipino citizens

## 2013 BAR EXAMS

### MULTIPLE CHOICE 6

A child born under either the 1973 or the 1987 Constitution, whose father or mother is a Filipino citizen at the time of his birth, is \_\_\_\_\_ . (1%)

(A) not a Filipino citizen as his father and mother must both be Filipino citizens at the time of his birth

(B) not a Filipino citizen if his other is a Filipino citizen but his father is not, at the time of his birth

**(C) a Filipino citizen no matter where he or she may be born**

(D) a Filipino citizen provided the child is born in the Philippines

(E) a Filipino citizen if he or she so elects upon reaching the age of 21

### **SUGGESTED ANSWER:**

(C)Article III, Section 1(2) of the 1973 Constitution). (Article IV, Section 1(2) of the 1987 Constitution).

## 2014 BAR EXAMS

Rosebud is a natural-born Filipino woman who got married to Rockcold, a citizen of State Frozen. By virtue of the laws of Frozen, any person who marries its citizens would automatically be deemed its own citizen. After ten years of marriage, Rosebud, who has split her time between the Philippines and Frozen, decided to run for Congress. Her opponent sought her disqualification, however, claiming that she is no longer a natural-born citizen. In any event, she could not seek elective position since she never renounced her foreign citizenship pursuant to the Citizenship Retention and Reacquisition Act (R.A. No. 9225). Is Rosebud disqualified to run by reason of citizenship? (4%)

### **SUGGESTED ANSWER:**

No, because Rosebud never lost her status as a natural-born citizen by reason of marriage to a foreigner. In addition to her status as a natural born citizen, she acquired the citizenship of her husband by operation of law and not by a voluntary act of acquisition thereof and voluntary renunciation of her former citizenship.

In relation to election protest, what is prohibited is dual allegiance. Allegiance to a foreign state is acquired through an express and voluntary act of renouncing once allegiance to the Republic of the Philippines and swearing allegiance to a foreign state e.g. enlisting in the military services of another state.

**ALTERNATIVE ANSWER:**

By naturalization according to the Bureau of Immigration of the Philippines is the judicial act of adopting a foreigner and clothing him with the privileges of a native-born citizen. It implies an act of renunciation of a former nationality and the fact of entrance into a similar relation towards a new body politic. Rosebud never renounced her Filipino citizenship. She acquired it by operation of the law of Frozen Country. R.A. 9225, applies to those who lost their citizenship by some voluntary act of renunciation. Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission, they are deemed, under the law, to have renounced it.. ex. Naturalization to another country, service in the military etc. Sec. 3, RA 9225 xxx Any provision of law to the contrary notwithstanding, natural-born citizenship by reason of their naturalization as citizens of a foreign country... Rosebud was not naturalized but rather acquired the citizenship of Frozen country by operation of law. In the case of she became a naturalized Australian citizen owing to her marriage TEODORA SOBEJANA-CONDON, she became a NATURALIZED CITIZEN owing to her marriage. Hence, the word Naturalized, means there must be some form of voluntary act of renunciation. In the case of Rosebud it was by virtue of the laws of Frozen, any person who marries its citizens would automatically be deemed its own citizen. The case never mentioned any naturalization process.

**2015 BAR EXAMS**

Discuss the evolution of the principle of jus sanguinis as basis of Filipino citizenship under the 1935, 1973, and 1987 Constitutions. (3%)

**SUGGESTED ANSWER:**

In the 1935 Constitution, Filipino citizenship was defined, classified and regulated by Article IV, which stated that:

Section 1. The following are citizens of the Philippines

- (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution
- (2) Those born in the Philippine Islands of foreign parents who, before the adoption of the Constitution, had been elected to public office in the Philippine Islands

- (3) Those whose fathers are citizens of the Philippines
- (4) Those whose mothers are citizens of the Philippines, and upon reaching the age of majority, elect Philippine citizenship
- (5) Those who are naturalized in accordance with law.

Section 2. Philippine citizenship may be lost or reacquired in the manner provided by law:

As can be seen from the previous citizenship laws, the principle of *jus sanguinis* was not applicable prior to the 1935 Constitution. Before Section 1, which considered citizens those whose fathers were Filipino citizens, the prevailing doctrine had been *jus soli*. By recognizing the principle of *jus sanguinis*, it was recognized that a blood relationship would serve “as a better guarantee of loyalty to the country of one’s parents” than *jus soli*.

Section 1(4) contemplated a situation where only the mother was a Filipino citizen, and gave the child an opportunity to elect Filipino citizenship only when he reached the age of majority. Prior to his reaching such an age, he at most has an inchoate right to Filipino citizenship. The provision is also applicable to mothers who were Filipinos before acquiring the nationality of their foreign spouses. To restrict its interpretation in such a way that the time of election was considered controlling as to the status when the mother should be a Filipina would have nullified the particular provision. For illegitimate children however, this provision would not have been applicable, since the citizenship of the father would not then be material, since an illegitimate child as a rule follows the nationality of the mother.

The right to elect is governed by Commonwealth Act No. 652, which states the requirements and procedure for election, and must be express:

Option to elect Philippine citizenship shall be expressed in a statement to be filed and sworn to by the party concerned before any officer authorized to administer oath and shall be filed with the nearest civil registrar. The party elected must likewise accompany the aforementioned statement with the oath of allegiance to the Constitution and the Government of the Philippines. Where the party concerned resides abroad, he must make the statement before any officer of the government of the Philippines authorized to administer oaths and must forward such statement together with his oath of allegiance to the civil registrar of Manila.

## **1973 Constitution**

Article III, Section 2 enumerates the following as citizens of the Philippines:

1. Those who are citizens of the Philippines at the time of the adoption of this Constitution.
2. Those whose fathers or mothers are citizens of the Philippines
3. Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five
4. Those who are naturalized in accordance with law.

The purpose of the first paragraph of the provision was to protect the continued enjoyment of Philippine citizenship to those who already possess the right as of 17 January 1973.

The Section 2(2) followed the principle of *jus sanguinis*. However, unlike the 1935 Constitution, Filipino mothers were placed by the 1973 Constitution on equal footing with Filipino fathers as far as the determination of the citizenship of their children was concerned. The father or mother may be a natural-born Filipino or a Filipino by naturalization or by election. The only important consideration here was that the mother must be a Filipino at the time of the birth of the child. It must be reiterated that this rule applied only to those born of a Filipino mother on or after 17 January 1973.

As the 1973 Constitution followed the doctrine of *jus sanguinis*, it disregarded the place of birth of a person. As long as one was born of Filipino parents, he was considered a Filipino. If he was born in a country where the rule of *jus soli* was the prevailing principle, it would be a case of dual citizenship.

### **1987 Constitution**

The 1987 Constitution builds on the previous Constitutions, but modifies provisions which cannot be found in the 1973 and 1935 Constitution. Those who were citizens during the adoption of the new Constitution were considered citizens. However, this does not rectify any defects in the acquisition of such citizenship under the 1935 or 1973 Constitution. "If a person's citizenship was subject to judicial challenge under the old law, it still remains subject to challenge under the new – whether or not the judicial challenge had been commenced prior to the effectivity of the new Constitution."

The principle of *jus sanguinis* still applies, and in following the lead of the 1973 Constitution, the Filipino woman is placed on the same footing as Filipino men in matters of citizenship. It is essential, however, that the mother is a Filipina when the child is born. The principle of parental

authority is still applicable in the new Constitution, so this article only applies to legitimate children, not to adopted or illegitimate ones. Mothers have parental authority over illegitimate children. Adopted children, on the other hand, as they are not related by blood, do not follow their adoptive parents' citizenship, despite being under their parental authority.

As for those who were born after the adoption of the 1973 Constitution of Filipino mothers, the 1987 Constitution still provides the transitory provision that was also in the 1973 Constitution: "Those born before 17 January 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority."

B. **Modes of acquiring citizenship**

**2012 BAR EXAMS  
MULTIPLE CHOICE 11**

Basic Philippine law, in respect of the modes of acquiring citizenship, follows the rule(s) of:

- a. **jus soli and jus sanguinis;**
- b. naturalization and provides for jus soli;
- c. jus sanguinis and provides for naturalization;
- d. none of the above.

**SUGGESTED ANSWER:**

- A. SECTION 1, ARTICLE IV OF CONSTITUTION

C. **Naturalization and denaturalization**

D. **Dual citizenship and dual allegiance**

**2012 BAR EXAMS  
MULTIPLE CHOICE 12**

Dual allegiance by citizen is:

- a. **inimical to the national interest and is therefore proscribed by law;**
- b. inimical to the national interest and is therefore prescribed by law;
- c. inimical to the national interest and therefore shall be dealt with by law;

d. inimical to the national interest and is therefore outside of coverage of law.

**SUGGESTED ANSWER:**

A. SECTION 5, ARTICLE IV OF CONSTITUTION

**2012 BAR EXAMS**

Margarita was born in 1986 to a Filipino mother and Swedish father. She has been living and continues to live in the US for the last 20 years and has also been naturalized as a US citizen. She recently reacquired Philippine citizenship under RA 9225, the Citizenship Retention and Reacquisition Act of 2003. Can Margarita vote in the next national elections?

**a. Yes. Dual citizens who are not residents may register under the Overseas Absentee Voting Law.**

b. Yes. Margarita is a Filipino citizen and thus may enjoy the right to suffrage like everyone else without registering as an overseas absentee voter.

c. No. Margarita fails the residency requirement under Section 1, Article V of the Constitution for Filipinos.

d. No. Dual citizens upon renunciation of their Filipino citizenship and acquisition of foreign citizenship, have practically and legally abandoned their domicile and severed their legal ties to their homeland as a consequence.

**SUGGESTED ANSWER:**

A. Macalintal Vs. Commission On Elections, 405 Scra 614

E. **Loss and re-acquisition of Philippine citizenship**

F. **Natural-born citizens and public office**

**IX. Law on Public Officers**

A. **General principles**

**2012 BAR EXAMS**

SALN means:

a. Summary of assets, liabilities and net worth;

b. Statement of assets in banks, liabilities and net worth;

**c. Statement of assets, liabilities and net worth;**

d. Statement of personal assets, liabilities and net worth.

**SUGGESTED ANSWER:**

(c) SECTION 17, ARTICLE XI OF CONSTITUTION

- B. Modes of acquiring title to public office
- C. Modes and kinds of appointment
- D. Eligibility and qualification requirements
- E. Disabilities and inhibitions of public officers
- F. Powers and duties of public officers
- G. Rights of public officers
- H. Liabilities of public officers
  - 1. Preventive suspension and back salaries
  - 2. Illegal dismissal, reinstatement and back salaries
- I. Immunity of public officers
- J. De facto officers

**2013 BAR EXAMS**

Rafael questioned the qualifications of Carlos as congressman of the Third District of Manila on the ground that Carlos is a citizen of the USA. The decision disqualifying Carlos for being a US citizen came only in March 2010, i.e., after the adjournment of the session of Congress on the 3rd year of the position's three-year term.

What was Carlos' status during his incumbency as congressman?

(A) He was a de jure officer, having been duly elected and proclaimed.

(B) He was not a public officer because he effectively was not entitled to be a congressman.

(C) He was a de jure officer since he completed the service of his term before he was disqualified.

**(D) He was a de facto officer since he had served and was only disqualified later.**

(E) He neither possesses de jure nor de facto status as such determination is pointless.

**SUGGESTED ANSWER:**

(D)(Rodriguez v. Tan, G.R. No. L-3913, August 7, 1952, 91 Phil. 724).

**K. Termination of official relation**

**L. The Civil Service**

1. **Scope**
2. **Appointments to the civil service**
3. **Personnel actions**

**M. Accountability of public officers**

1. **Impeachment**

Cite at least two (2) grounds for impeachment and explain why you chose them. (6%)

**SUGGESTED ANSWER:**

The President can be impeached for culpable violation of the Constitution and betrayal of public trust. The Supreme Court has already ruled that the provision in Article XVIII, Section 25 of the Constitution requires a treaty even for the mere temporary presence of foreign troops in the Philippines (Bayan v. Zamora, G.R. No. 138570, October 10, 2000, 342 SCRA 499). The President cannot claim, therefore, that he acted in good faith. (Report of the Special Committee in the Impeachment of President Quirino, Congressional Record of the House of President Quirino, Congressional Record of the House of Representatives, Vol. IV, p. 1553). Betrayal of public trust includes violation of the oath of the office of the President (Record of the Constitutional Commission, Vol. II, p. 272). In his oath of office, the President swore to preserve and defend the Constitution (Article VII, Section 5 of the 1987 Constitution).

**ALTERNATIVE ANSWER:**

The President can be impeached for culpable violation of the Constitution and graft and corruption (Article XI, Section 2). By entering into the executive agreement, the President violated Section 3€ of the

Anti-Graft and corrupt Practices act because of the undue injury to the republic of the Philippines.

### **2012 BAR EXAMS**

A verified impeachment complaint was filed by two hundred (200) Members of the House of Representatives against Madam Chief Justice Blue. The complaint was immediately transmitted to the Senate for trial.

- a. Madam Chief Justice Blue challenges such immediate transmittal to the Senate because the verified complaint 1) not included in the order of business of the House, 2) was not referred to the House Committee on Justice for hearing and consideration for sufficiency in form and substance, and 3) was not submitted to the House Plenary for consideration as enumerated in Paragraph (2), Section 3, Article XI of the 1987 Constitution. Decide with reasons. (5%)
  
- b. What is the purpose of Impeachment? Does conviction prevent further prosecution and punishment? Explain. (3%)
  
- c. Enumerate the grounds for impeachment. Is graft and corruption a ground for impeachment? (2%)

### **SUGGESTED ANSWER:**

a. since the verified complaint was filed by 200 members of the house of representatives and they constituted at least one third of its Members, it need not undergo the procedure in paragraph 2, section 3, article XI of the Constitution. The verified complaint constitutes the article of impeachment, and the trial by the senate should proceed forthwith. (section 3 (4), Article XI of the constitution.

b. the purpose of impeachment is not to punish but only to remove a public officer to secure the people against gross political misdemeanors.( bernas, the 1987 constitution of the Philippines, A commentary, 2009 ed., p. 1150)

Conviction does not prevent further prosecution and punishment. The person convicted is subject to prosecution and punishment according to law. (section 3(7), article of the Constitution.)

C. the following are the grounds for Impeachment:

1. culpable violation of the constitution
2. Treason
3. Bribery
4. Graft and Corruption
5. Other high crimes; and
6. betrayal of public trust

### **2012 BAR EXAMS**

Which one is NOT among the Constitutionally mandated grounds for impeachment of impeachable officials:

- a. culpable violation of the Constitution;
- b. treason, bribery, graft and corruption and other high crimes;
- c. betrayal of public trust;
- d. culpable violation of the duty to be at all times accountable to the people.**

### **SUGGESTED ANSWER:**

(D) SECTION 2, ARTICLE XI OF CONSTITUTION

### **2012 BAR EXAMS**

Which is NOT an impeachable public officer:

- a. a justice of the Supreme Court;
- b. a commissioner of the Comelec;

- c. the administrator of the Supreme Court;
- d. the Ombudsman.**

**SUGGESTED ANSWER:**

(D) SECTION 2, ARTICLE XI OF CONSTITUTION

**2012 BAR EXAMS**

Which has the exclusive power to initiate all cases of impeachment:

- a. the Senate;
- b. the House of Representatives;**
- c. the Senate President;
- d. the Speaker of the House of Representatives

**SUGGESTED ANSWER:**

(C) Section 3(1), Article of Constitution

**2012 BAR EXAMS**

At least one-third of all the members of the House of Representatives may file articles of impeachment by:

- a. verified bill and resolution;
- b. verified complaint and resolution;**
- c. verified notice and resolution;
- d. verified complaint and notice.

**SUGGESTED ANSWER:**

(B) SECTION 3(1), ARTICLE XI OF CONSTITUTION

**2012 BAR EXAMS**

A public officer impeached and removed from office shall:

- a. nevertheless be immune from prosecution, trial and punishment according to law;

b. nevertheless be liable and subject to prosecution, trial and punishment under the Anti-Graft and Corrupt Practices Act;

**c. nevertheless be liable and subject to prosecution, trial and punishment according to law;**

d. nevertheless be liable and subject to prosecution, trial and punishment only for criminal acts under the law.

**SUGGESTED ANSWER:**

(c) SECTION 3(7), ARTICLE XI OF CONSTITUTION

**2013 BAR EXAMS**

As a leading member of the Lapiang Mandirigma in the House of Representatives, you were tasked by the party to initiate the moves to impeach the President because he entered into an executive agreement with the US Ambassador for the use of the former Subic Naval Base by the US Navy, for free, i.e., without need to pay rent nor any kind of fees as a show of goodwill to the U.S. because of the continuing harmonious RP-US relations. Cite at least two (2) grounds for impeachment and explain why you chose them. (6%)

**SUGGESTED ANSWER:**

The President can be impeached for culpable violation of the Constitution and betrayal of public trust. The Supreme Court has already ruled that the provision in Article XVIII, Section 25 of the Constitution requires a treaty even for the mere temporary presence of foreign troops in the Philippines (*Bayan v. Zamora*, G.R. No. 138570, October 10, 2000, 342 SCRA 499). The President cannot claim, therefore, that he acted in good faith. (Report of the Special Committee in the Impeachment of President Quirino, Congressional Record of the House of President Quirino, Congressional Record of the House of Representatives, Vol. IV, p. 1553). Betrayal of public trust includes violation of the oath of the office of the President (Record of the Constitutional Commission, Vol. II, p. 272). In his oath of office, the President swore to preserve and defend the Constitution (Article VII, Section 5 of the 1987 Constitution).

**ALTERNATIVE ANSWER:**

The President can be impeached for culpable violation of the Constitution and graft and corruption (Article XI, Section 2). By entering into the executive agreement, the President violated Section 3€ of the Anti-Graft and corrupt Practices act because of the undue injury to the republic of the Philippines.

## 2014 BAR EXAMS

The one-year-bar rule in impeachment proceedings is to be reckoned from the time the (1%)

(A) first impeachment complaint is filed

**(B) impeachment complaint is referred to the Committee on Justice**

(C) House of Representatives vote on the impeachment complaint

(D) House of Representatives endorses the Articles of Impeachment to the Senate

2. Ombudsman (Sections 5 to 14, Article XI of the 1987 Constitution, in relation

to R.A. No. 6770, or otherwise known as "The Ombudsman Act of 1989.")

a) Functions

## 2012 BAR EXAMS

Judge Red is the Executive Judge of Green City. Red is known to have corrupt tendencies and has a reputation widely known among practicing lawyers for accepting bribes. Ombudsman Grey, wishing to "clean up" the government from errant public officials, initiated an investigation on the alleged irregularities in the performance of duties of Judge Red.

- a. Judge Red refused to recognize the authority of the Office of the Ombudsman over him because according to him, any administrative action against him or any court official or employee falls under the exclusive jurisdiction of the Supreme Court. Decide with reasons. (5%)
- b. Does the Ombudsman have authority to conduct investigation over crimes or offenses committed by public officials that are NOT in connection or related at all to the official's discharge of his duties and functions? Explain. (3%)
- c. Who are required by the Constitution to submit a declaration under oath of his assets, liabilities, and net worth? (2%)

### SUGGESTED ANSWER:

A. Since the complaint refers to the performance of the duties of judge red, ombudsman grey should not act on it and should not act on it and should refer it to the supreme court. His investigation will encroach upon the exclusive power of administrative supervision of the supreme court over all courts. ( maceda vs. Vasquez, 221 scra 464)

B. The ombudsman can investigate crime or offenses committed by public officers which are not connected with the performance of their

duties. Under section 13(1) article xi of the constitution, the ombudsman can investigate any act or omission of a public official which is illegal. (deloso vs. Domingo, 191 scra 545.)

C. All public officers and employees are required to submit a declaration under oath of their assets, liabilities and net worth. (section 17 article xi of the constitution)

## **2012 BAR EXAMS**

The Ombudsman and his deputies are appointed by the President from a list prepared by:

- a. the Integrated Bar of the Philippines;
- b. the Commission on Appointments;
- c. the Judicial and Bar Council;**
- d. the Supreme Court.

### **SUGGESTED ANSWER:**

(C) SECTION 9, ARTICLE XI OF CONSTITUTION

- b) Judicial review in administrative proceedings
  - c) Judicial review in penal proceedings
- 
- 3. Sandiganbayan
  - 4. Ill-gotten wealth

### **N. Term limits**

### **X. Administrative Law**

- A. General principles
- B. Administrative agencies
  - 1. Definition
  - 2. Manner of creation
  - 3. Kinds
- C. Powers of administrative agencies
  - 1. Quasi-legislative (rule-making) power

## **2012 BAR EXAMS**

Which one of the following theories does not support the valid delegation of authority by the Congress to an administrative agency:

- a. an administrative agency may "fill up the details" of a statute;
- b. the legislature may leave to another body the ascertainment of facts necessary to bring the law into actual operation;
- c. an administrative agency has equal expertise with the legislature in crafting and implementing laws;
- d. contingent legislation.**

**SUGGESTED ANSWER:**

D. UNITED BF HOMEOWNERS ASSOCIATION VS BF HOMES INC.  
310 SCRA 304

- a) **Kinds of administrative rules and regulations**

**2012 BAR EXAMS**

Which one of the enumeration below does not come under the Administrative Code definition of a "rule":

- a. agency statement of general applicability that implements or interprets a law;
- b. fixes and describes the procedures in or practice requirements of, an agency;
- c. includes memoranda and statements concerning internal administration;
- d. an agency process for the formulation of a final order.**

**SUGGESTED ANSWER:**

(D) Section 2(2), Chapter 1, Book VII Of Administrative Code

**2012 BAR EXAMS**

The requirement of the Administrative Code on "public participation" is that, if not otherwise required by law, an agency shall:

- a. in all cases, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule;

b. in all clear and proper cases, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule;

c. as far as practicable, publish or circulate notices of proposed rules and afford the party-list parties the opportunity to submit their views prior to the adoption of any rule;

**d. as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.**

**SUGGESTED ANSWER:**

(D) Section 9(1), Chapter 2, Book VII Of Administrative Code

- b) Requisites for validity  
2. Quasi-judicial (adjudicatory) power

**2012 BAR EXAMS**

Under the Administrative Code, "adjudication" means:

a. whole or any part of any agency permit, certificate, or other form of permission, or regulation of the exercise of a right or privilege;

**b. an agency process for the formulation of a final order;**

c. agency process for the formulation, amendment, or repeal of a rule;

d. agency process involving the grant, renewal, denial, revocation or conditioning of a license.

**SUGGESTED ANSWER:**

(B) SECTION 2(9), CHAPTER 1, BOOK VII OF ADMINISTRATIVE CODE

- a) Administrative due process

**2012 BAR EXAMS**

One of the cardinal primary due process rights in administrative proceedings is that evidence must be "substantial." "Substantial evidence" is:

a. less than a mere scintilla;

b. less than preponderant scintilla;

- c. more than a glint of scintilla;
- d. more than a mere scintilla.**

**SUGGESTED ANSWER:**

(D) Ang Tibay Vs Court Of Industrial Relations, 69 Phil. 635

- b) Administrative appeal and review
- c) Administrative *resjudicata*
- 3. Fact-finding, investigative, licensing and rate-fixing powers

**2012 BAR EXAMS**

Under the Administrative Code, in the fixing of rates, no rules or final order shall be valid unless:

- a. the proposed rates shall have been submitted to the U.P. Law Center for publication at least two weeks before the first hearing thereon;
- b. the proposed rates shall have been published in the Official Gazette at least two weeks before the final hearing thereon;
- c. the proposed rates shall have been published in a newspaper of general circulation at least two weeks before the first hearing thereon;**
- d. the proposed rates shall have been published in a newspaper of general circulation at least two weeks before the final hearing thereon.

**SUGGESTED ANSWER:**

(C) Section 9(2), Chapter 2, Book Vii Of Administrative Code

- E. Judicial recourse and review

**2012 BAR EXAMS**

In the judicial review of decisions of administrative agencies, the Administrative Code requires that the review shall be made:

- a. on the basis of the pleadings taken as a whole;
- b. on the basis of the record taken as a whole;**
- c. on the basis of the evidence taken as a whole;
- d. on the basis of the memoranda taken as a whole.

**SUGGESTED ANSWER:**

(B) Section 25(7), Chapter 4, Book VII of Administrative Code

**2012 BAR EXAMS**

In the judicial review of decisions of administrative agencies, the Administrative Code requires that, except when specifically provided otherwise by law:

a. the findings of law of agency when supported by substantial evidence, shall be final;

**b. the findings of fact of the agency when supported by preponderant evidence, shall be final;**

c. the findings of fact of the agency when supported by substantial evidence, shall be final;

d. the findings of law of the agency when supported by credible evidence, shall be final.

1. Doctrine of primary administrative jurisdiction
2. Doctrine of exhaustion of administrative remedies

**2015 BAR EXAMS**

The Secretary of the Department of Environment and Natural Resources (DENR) issued Memorandum Circular No. 123-15 prescribing the administrative requirements for the conversion of a timber license agreement (TLA) into an Integrated Forestry Management Agreement (IFMA). ABC Corporation, a holder of a TLA which is about to expire, claims that the conditions for conversion imposed by the said circular are unreasonable and arbitrary and a patent nullity because it violates the non-impairment clause under the Bill of Rights of the 1987 Constitution. ABC Corporation goes to court seeking the nullification of the subject circular. The DENR moves to dismiss the case on the ground that ABC Corporation has failed to exhaust administrative remedies which is fatal to its cause of action. If you were the judge, will you grant the motion? EXPLAIN

**SUGGESTED ANSWER:**

The rule regarding exhaustion of administrative remedies is not a hard and fast rule. It is not applicable:

(1) where the question in dispute is purely a legal one, or

(2) where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction; or

(3) where the respondent is a department secretary, whose acts as an alter ego of the President bear the implied or assumed approval of the latter, unless actually disapproved by him, or

(4) where there are circumstances indicating the urgency of judicial intervention,

(Gonzales vs. Hechanova, L-21897, October 22, 1963, 9 SCRA 230; Abaya vs. Villegas, L-25641, December 17, 1966, 18 SCRA; Mitra vs. Subido, L-21691, September 15, 1967, 21 SCRA 127)

Said principle may also be disregarded when it does not provide a plain, speedy and adequate remedy, (Cipriano vs. Marcelino, 43 SCRA 291), when there is no due process observed (Villanos vs. Subido, 45 SCRA 299), or where the protestant has no other recourse (Sta. Maria vs. Lopez, 31 SCRA 637)

### 3. Doctrine of finality of administrative action

## XI. Election Law

- A. Suffrage
- B. Qualification and disqualification of voters
- C. Registration of voters
- D. Inclusion and exclusion proceedings
- E. Political parties
  - 1. Jurisdiction of the COMELEC over political parties
  - 2. Registration
- F. Candidacy
  - 1. Qualifications of candidates

## 2013 BAR EXAMS

Congress enacted Republic Act No. 1234 requiring all candidates for public offices to post an election bond equivalent to the one (1) year salary for the position for which they are candidates. The bond shall be forfeited if the candidates fail to obtain at least 10% of the votes cast.

Is Republic Act No. 1234 valid? (1%)

(A) It is valid as the bond is a means of ensuring fair, honest, peaceful and orderly elections.

(B) It is valid as the bond requirements ensures that only candidates with sufficient means and who cannot be corrupted, can run for public office.

**(C) It is invalid as the requirement effectively imposes a property qualification to run for public office.**

(D) It is invalid as the amount of the surety bond is excessive and unconscionable.

(E) It is valid because it is a reasonable requirement; the Constitution itself expressly supports the accountability of public officers.

**SUGGESTED ANSWER:**

(C) *Marquera v. Borra*, G.R. No. L-24761, September 7, 1965, 15 SCRA 7)

2. **Filing of certificates of candidacy**

a) **Effect of filing**

b) **Substitution of candidates**

c) **Ministerial duty of COMELEC to receive certificate**

d) **Nuisance candidates**

e) **Petition to deny or cancel certificates of candidacy**

f) **Effect of disqualification**

g) **Withdrawal of candidates**

G. **Campaign**

1. **Premature campaigning**

**2012 BAR EXAMS**

Mayor Pink is eyeing re-election in the next mayoralty race. It was common knowledge in the town that Mayor Pink will run for re-election in the coming elections. The deadline for filing of Certificate of Candidacy (CoC) is on March 23 and the campaign period commences the following day. One month before the deadline, Pink has yet to file her CoC, but she has been going around town giving away sacks of rice with the words "Mahal Tayo ni Mayor Pink" printed on them, holding public gatherings and speaking about how good the town is doing, giving away pink t-shirts with "Kay Mayor Pink Ako" printed on them.

- a. Mr. Green is the political opponent of Mayor Pink. In April, noticing that Mayor Pink had gained advantage over him because of her activities before the campaign period, he filed a petition to disqualify Mayor Pink for engaging in an election campaign outside the designated period.

a.1. Which is the correct body to rule on the matter? Comelec en banc, or Comelec division? Answer with reasons. (2%)

a.2. Rule on the petition. (5%)

**SUGGESTED ANSWER:**

A. 1. It Is The Commission On Elections En Banc Which Should Decide The Petition. Since It Involves The Exercise Of The Administrative Powers Of The Commission On Election, Section 3, Article IX-C Of The Constitution Is Not Applicable. (Baytan Vs. Commission On Elections, 396 Scra 703)

A. 2. The Petition Should Be Denied. Under Section 80 Of The Omnibus Election Code To Be Liable For Premature Campaigning He Must Be A Candidate, Unless He Filed His Certificate Of Candidacy, He Is Not A Candidate. (Lanot Vs. Commission On Elections, 507 Scra 114.)

2. Prohibited contributions
3. Lawful and prohibited election propaganda
4. Limitations on expenses
5. Statement of contributions and expenses
- H. Board of Election Inspectors and Board of Canvassers
  1. Composition
  2. Powers
- I. Remedies and jurisdiction in election law
  1. Petition not to give due course to or cancel a certificate of candidacy
  2. Petition for disqualification

**2014 BAR EXAMS**

Beauty was proclaimed as the winning candidate for the position of Representative in the House of Representatives three (3) days after the elections in May. She then immediately took her oath of office. However, there was a pending disqualification case against her, which case was eventually decided by the COMELEC against her 10 days after the election. Since she has already been proclaimed, she ignored that

decision and did not bother appealing it. The COMELEC then declared in the first week of June that its decision holding that Beauty was not validly elected had become final. Beauty then went to the Supreme Court questioning the jurisdiction of the COMELEC claiming that since she had already been proclaimed and had taken her oath of office, such election body had no more right to come up with a decision – that the jurisdiction had already been transferred to the House of Representatives Electoral Tribunal. How defensible is the argument of Beauty? (4%)

**SUGGESTED ANSWER:**

The House of Representatives Electoral Tribunal has acquired exclusive jurisdiction over the case of Beauty, since she has already been proclaimed. The proclamation of the winning candidate is the operative fact that triggers the exclusive jurisdiction of the house of Representative Electoral Tribunal over election contests relating to the election, returns and qualifications of the winning candidate. The proclamation divests the Commission on Elections of jurisdiction over the question of disqualifications pending before it at the time of the proclamation. Any case pertaining to questions over the qualifications of a winning candidate should be raised before the House of Representative Electoral Tribunal (*Limkaichong v. Commission on Elections*, 583 SCRA 1 (2011); *Jalosjos, Jr. v. Commission on Election*, 674 SCRA 530 (2013)).

**ANOTHER ALTERNATIVE ANSWER:**

The argument of Beauty is untenable. For the House of Representatives Electoral Tribunal to acquire jurisdiction over the disqualification case, she must be a Member of the House of Representatives. Although she had been proclaimed and had taken her oath of office, she had not yet assumed office. The terms of office of the Members of the House of Representative begins at noon of the thirtieth day of June next following their election (*Reyes v. Commission on Elections*, 699 SCRA 522 (2012)). (2014 BAR EXAMS)

**2015 BAR EXAMS**

(1) Gandang Bai filed her certificate of candidacy (COC) for municipal mayor stating that she is eligible to run for the said position. Pasyo Maagap, who also filed his COC for the same position, filed a petition to deny due course or cancel Bai's COC under Section 78 of the Omnibus Election Code for material misrepresentation as before Bai filed her COC, she had already been convicted of a crime involving moral turpitude. Hence, she is disqualified perpetually from holding any public office or from being elected to any public office. Before the election, the COMELEC cancelled Bai's COC but her motion for reconsideration (MR) remained pending even after the election. Bai garnered the highest number of votes followed by Pasyo Maagap, who took his oath as Acting Mayor. Thereafter, the COMELEC denied Bai's MR and declared her disqualified for running for Mayor. P. Maagap asked the Department of Interior and Local Government Secretary to be allowed to take his oath as permanent municipal mayor. This request was opposed by Vice Mayor Umaasa, invoking the rule on succession to the permanent vacancy in the Mayor's office. Who between Pasyo Maagap and Vice Mayor Umaasa has the right to occupy the position of Mayor? Explain your answer. (5%)

**SUGGESTED ANSWER:**

We have declared that not even this Court has authority under any law to impose upon and compel the people to accept a loser, as their representative or political leader. The wreath of victory cannot be transferred from the disqualified winner to the repudiated loser.

The Court emphasized that the candidate obtaining the second highest number of votes for the contested office could not assume the office despite the disqualification of the first placer because the second placer was "not the choice of the sovereign will." Surely, the Court explained, a minority or defeated candidate could not be deemed elected to the office. There was to be no question that the second placer lost in the election, was repudiated by the electorate, and could not assume the vacated position. No law imposed upon and compelled the people to accept a loser to be their political leader or their representative.

The only time that a second placer is allowed to take the place of a disqualified winning candidate is when two requisites concur, namely:

(a) the candidate who obtained the highest number of votes is disqualified; and

(b) the electorate was fully aware in fact and in law of that candidate's disqualification as to bring such awareness within the realm of notoriety but the electorate still cast the plurality of the votes in favor of the ineligible candidate.

Under this sole exception, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case the eligible candidate with the second highest number of votes may be deemed elected. But the exception did not apply in favor of Pasyo Maagap simply because the second element was absent.

(2) How do you differentiate the petition filed under Section 68 from the petition filed under Section 78, both of the Omnibus Election Code? (3%)

**SUGGESTED ANSWER:**

The grounds for disqualification for a petition under Section 68 of the Omnibus Election Code are specifically enumerated:

Sec. 68. *Disqualifications.* – Any candidate who, in an action or protest in which he is a party is declared by final decision by a competent court guilty of, or found by the Commission of having **(a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6,** shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Emphasis supplied)

A petition for disqualification under Section 68 clearly refers to "the commission of prohibited acts and possession of a permanent resident status in a foreign country."<sup>20</sup> **All the offenses mentioned in Section 68 refer to election offenses under the Omnibus Election Code, not to violations of other penal laws.** There is absolutely nothing in the language of Section 68 that would justify including violation of the three-term limit rule, or conviction by final judgment of the crime of falsification under the Revised Penal Code, as one of the grounds or offenses covered under Section 68. In *Codilla, Sr. v. de Venecia*,<sup>21</sup> this Court ruled:

[T]he jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the Omnibus Election Code. All other

election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature. x x x

### *False Material Representation*

Section 78 of the Omnibus Election Code states that a certificate of candidacy may be denied or cancelled when there is **false material representation of the contents of the certificate of candidacy**:

*Sec. 78. Petition to deny due course to or cancel a certificate of candidacy.* – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person **exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false**. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

3. Petition to declare failure of elections
4. Pre-proclamation controversy
5. Election protest
6. Quo warranto

### **2012 BAR EXAMS**

Mayor Pink is eyeing re-election in the next mayoralty race. It was common knowledge in the town that Mayor Pink will run for re-election in the coming elections. The deadline for filing of Certificate of Candidacy (CoC) is on March 23 and the campaign period commences the following day. One month before the deadline, Pink has yet to file her CoC, but she has been going around town giving away sacks of rice with the words "Mahal Tayo ni Mayor Pink" printed on them, holding public gatherings and speaking about how good the town is doing, giving away pink t-shirts with "Kay Mayor Pink Ako" printed on them.

- b. Mr. Green is the political opponent of Mayor Pink. In April, noticing that Mayor Pink had gained advantage over him because of her activities before the campaign period, he filed a petition to disqualify Mayor Pink for engaging in an election campaign outside the designated period.
  - a.1. Which is the correct body to rule on the matter? Comelec en banc, or Comelec division? Answer with reasons. (2%)

- a.2. Rule on the petition. (5%)
- c. Distinguish briefly between Quo Warranto in elective office and Quo Warranto in appointive office. (3%)

**SUGGESTED ANSWER:**

A. 1. It Is The Commission On Elections En Banc Which Should Decide The Petition. Since It Involves The Exercise Of The Administrative Powers Of The Commission On Election, Section 3, Article Ix-C Of The Constitution Is Not Applicable. (Baytan Vs. Commission On Elections, 396 Scra 703)

A. 2. The Petition Should Be Denied. Under Section 80 Of The Omnibus Election Code To Be Liable For Premature Campaigning He Must Be A Candidate, Unless He Filed His Certificate Of Candidacy, He Is Not A Candidate. (Lanot Vs. Commission On Elections, 507 Scra 114.)

B. In Quo Warranto In Elective Officer The Issue Is The Ineligibility Of The Elected Candidate. (Section 3(E), Rule 1, Rules Of Procedure In Election Cases.) If He Is Ineligible, The Candidate Who Got The Second Highest Number Of Votes Cannot Be Proclaimed Elected. (Sinsuat Vs. Commission On Elections, 492 Scra 264.) A Voter May File A Petition For Quo Warranto Against An Elected Candidate. The Petition Should Be Filed Within Ten Days After The Proclamation Of The Elected Candidate.

In Quo Warranto In Appointive Office, The Issue Is The Legality Of The Appointment. The Court Will Decide Who Between, The Parties Has The Legal Tittle To The Office ( Nachura, Outline Reviewers In Political Law, P. 567.)

It Is The Solicitor General, A Public Prosecutor, Or A Person Claiming To Be Entitled To The Public Office Can File A Petition For Quo Warranto Against An Appointive Official. (Section 2 And 5, Rule 65 Of The Rules Of Court) The Petition Should Be Filed Within One Year After The Cause Of Action Accrued. (Section 11, Rules 66 Of The Rules Of Court.)

- J. Prosecution of election offenses**
- XII. Local Governments**
- A. **Public corporations**
1. **Concept**
- a) **Distinguished from government-owned or controlled corporations**

2. Classifications
    - a) Quasi-corporations
    - b) Municipal corporations
- B. Municipal corporations
1. Elements
  2. Nature and functions
  3. Requisites for creation, conversion, division, merger or dissolution

## **2014 BAR EXAMS**

From an existing province, Wideland, Congress created a new province, Hundred Isles, consisting of several islands, with an aggregate area of 500 square kilometres. The law creating Hundred Isles was duly approved in a plebiscite called for that purpose. Juan, a taxpayer and a resident of Wideland, assailed the creation of Hundred Isles claiming that it did not comply with the area requirement as set out in the Local Government Code, i.e., an area of at least 2,000 square kilometres. The proponents justified the creation, however, pointing out that the Rules and Regulations Implementing the Local Government Code states that “the land area requirement shall not apply where the proposed province is composed of one (1) or more islands.” Accordingly, since the new province consists of several islands, the area requirement need not be satisfied. How tenable is the position of the proponents? (4%)

### **SUGGESTED ANSWER:**

In exempting provinces composed of one or more islands from both the contiguity and land area requirements, Article 9 of the IRR cannot be considered inconsistent with the criteria under Section 461 of the Local Government Code. Far from being absolute regarding application of the requirement of a contiguous territory of at least 2,000 square kilometers as certified by the Land Management Bureau, Section 461 allows for said exemption by providing, under paragraph (b) thereof, that (t)he territory need not be contiguous if (the new province) comprises two or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. For as long as there is compliance with the income requirement, the legislative intent is, after all, to the effect that the land area and population requirements may be overridden by the established economic viability of the proposed province.

## **2015 BAR EXAMS**

On August 15, 2015, Congresswoman Dina Tatalo filed and sponsored House Bill No. 5432, entitled "An Act Providing for the Apportionment of the Lone District of the City of Pangarap." The bill eventually became a law, R.A. No. 1234. It mandated that the lone legislative district of the City of Pangarap would now consist of two (2) districts. For the 2016 elections, the voters of the City of Pangarap would be classified as belonging to either the first or second district, depending on their place of residence. The constituents of each district would elect their own representative to Congress as well as eight (8) members of the Sangguniang Panglungsod. R.A. No. 1234 apportioned the City's barangays. The COMELEC thereafter promulgated Resolution No. 2170 implementing R.A. No. 1234.

Piolo Cruz assails the COMELEC Resolution as unconstitutional. According to him, R.A. No. 1234 cannot be implemented without conducting a plebiscite because the apportionment under the law falls within the meaning of creation, division, merger, abolition or substantial alteration of boundaries of cities under Section 10, Article X of the 1987 Constitution. Is the claim correct? Explain.

**SUGGESTED ANSWER:**

The pronounced distinction between Article VI, Section 5 and, Article X, Section 10 is on the requirement of a plebiscite. The Constitution and the Local Government Code expressly require a plebiscite to carry out any creation, division, merger, abolition or alteration of boundary of a local government unit.

*In contrast, no plebiscite requirement exists under the apportionment or reapportionment provision. In Tobias v. Abalos, a case that arose from the division of the congressional district formerly covering San Juan and Mandaluyong into separate districts, we confirmed this distinction and the fact that no plebiscite is needed in a legislative reapportionment. The plebiscite issue came up because one was ordered and held for Mandaluyong in the course of its conversion into a highly urbanized city, while none was held for San Juan. In explaining why this happened, the Court ruled that no plebiscite was necessary for San Juan because the objective of the plebiscite was the conversion of Mandaluyong into a highly urbanized city as required by Article X, Section 10 the Local Government Code; the creation of a new legislative district only followed as a consequence. In other words, the apportionment alone and by itself did not call for a plebiscite, so that none was needed for San Juan where only a reapportionment took place.*

The need for a plebiscite under Article X, Section 10 and the lack of requirement for one under Article VI, Section 5 can best be appreciated by a consideration of the historical roots of these two provisions, the nature of

the concepts they embody as heretofore discussed, and their areas of application.

Its territory remains completely whole and intact; there is only the addition of another legislative district and the delineation of the city into two districts for purposes of representation in the House of Representatives. Thus, Article X, Section 10 of the Constitution does not come into play and no plebiscite is necessary to validly apportion the City of Pangarap into two districts.

- C. **Principles of local autonomy**
- D. **Powers of local government units (LGUs)**

### **2013 BAR EXAMS**

May the power of cities to raise revenues be limited by an executive order of the President? (1%)

(A) Yes, because local government units are under the administrative control of the President through the Department of Interior and Local Government.

(B) No, because local government units now enjoy full local fiscal autonomy.

**(C) No, because only limitations established by Congress can define and limit the powers of local governments.**

(D) Yes, because the President has the power and authority to impose reasonable restrictions on the power of cities to raise revenues.

(E) Yes, if so provided in a city's charter.

### **SUGGESTED ANSWER:**

(C)(Article X, Section 5 of the 1987 Constitution).

### **2015 BAR EXAMS**

Typhoon Bangis devastated the Province of Sinagtala. Roads and bridges were destroyed which impeded the entry of vehicles into the area. This caused food shortage resulting in massive looting of grocery stores and malls. There is power outage also in the area. For these reasons, the governor of the province declares a state of emergency in their province through Proclamation No. 1. He also invoked Section 465 of the Local Government Code of 1991 (R.A. No. 7160) which vests on the provincial governor the power to carryout emergency measures during man-made and natural disasters and calamities, and to call upon the appropriate national law enforcement agencies to suppress disorder and lawless violence. In the same proclamation, the governor called upon the members of the Philippine National Police, with the assistance of the Armed Forces of the Philippines, to set up checkpoints and chokepoints, conduct general searches and seizures including arrests, and other actions necessary to ensure public safety. Was the action of the provincial governor proper? Explain. ( 4%)

**SUGGESTED ANSWER:**

Given the foregoing, respondent provincial governor is not endowed with the power to call upon the armed forces at his own bidding. In issuing the assailed proclamation, Governor Tan exceeded his authority when he declared a state of emergency and called upon the Armed Forces, the police. The calling-out powers contemplated under the Constitution is exclusive to the President. An exercise by another official, even if he is the local chief executive, is ultra vires, and may not be justified by the invocation of Section 465 of the Local Government Code,

The Local Government Code does not involve the diminution of central powers inherently vested in the National Government, especially not the prerogatives solely granted by the Constitution to the President in matters of security and defense. The intent behind the powers granted to local government units is fiscal, economic, and administrative in nature. The Code is concerned only with powers that would make the delivery of basic services more effective to the constituents,<sup>61</sup> and should not be unduly stretched to confer calling-out powers on local executives. (Kulayan vs Tan, July 3, 2012.)

1. Police power (general welfare clause)
2. Eminent domain
3. Taxing power
4. Closure and opening of roads
5. Legislative power
  - a) Requisites for valid ordinance
  - b) Local initiative and referendum
6. Corporate powers

- a) To sue and be sued
  - b) To acquire and sell property
  - c) To enter into contracts
    - (i) Requisites
    - (ii) Ultra vires contracts
  - 7. Liability of LGUs
  - 8. Settlement of boundary disputes
  - 9. Succession of elective officials
  - 10. Discipline of local officials
    - a) Elective officials
      - (i) Grounds
      - (ii) Jurisdiction
      - (iii) Preventive suspension
      - (iv) Removal
      - (v) Administrative appeal
      - (vi) Doctrine of condonation
    - b) Appointive officials
  - 11. Recall
  - 12. Term limits
- XIII. National Economy and Patrimony**
- A. Regalian doctrine
  - B. Nationalist and citizenship requirement provisions

### **2015 BAR EXAMS**

BD Telecommunications, Inc. (BDTI), a Filipino-owned corporation, sold its 1,000 common shares of stock in the Philippine Telecommunications Company (PTC), a public utility, to Australian Telecommunications (AT), another stockholder of the PTC which also owns 1,000 common shares. A Filipino stockholder of PTC questions the sale on the ground that it will increase the common shares of AT, a foreign company, to more than 40% of the capital (stock) of PTC in violation of the 40% limitation of foreign ownership of a public utility. AT argues that the sale does not violate the 60-40 ownership requirement in favor of Filipino citizens decreed in Section II, Article XII of the 1987 Constitution because Filipinos still own 70% of the capital of the PTC. AT points to the fact that it owns only 2,000 common voting shares and 1,000 non-voting preferred shares while Filipino stockholders own 1,000 common shares and 6,000 preferred shares, therefore, Filipino stockholders still own a majority of the outstanding capital stock of the corporation, and both classes of shares have a par value of Php 20.00 per share. Decide. (5%)

**ANSWER:**

[NOTE: I respectfully recommend that Jack Jimenez be requested to do the computations on the shares applying the Grandfather Rule as

provided for by the Supreme Court in NArra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation. (G.R. No. 195580, January 28, 2015).

“The application of the Grandfather Rule is justified by the circumstance of the case to determine the nationality of petitioners.. the use of the Grandfather Rule as a “Supplement” to the Control Test is not Prescribed by the Constitution...”

“The grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result in an otherwise foreign corporation rendered qualified to perform nationalized or partly nationalized activities. Hence, it is only when the control test is first complied with that the Grandfather Rule may be applied. Put in another manner, if the subject corporation’s Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign-owned, in which case, the need to resort to the Grandfather Rule disappears. On the other hand, a corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation if there is no doubt as to who has the “beneficial ownership” and “control” of the corporation. In that instance, there is no need for a dissection or further inquiry on the ownership of the corporate shareholders in both the investing and investee corporation or the application of the Grandfather Rule. As a corollary rule, even if the 60-40 Filipino to foreign equity ratio is apparently met by the subject or investee corporation, a resort to the Grandfather Rule is necessary if doubt exists as to the locus of the “beneficial ownership” and “control” (NArra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation, G.R. No. 195580, January 28, 2015)

“... the “Doubt” that demands the application of the Grandfather Rule in addition to or in tandem with the control test is not confined to or more bluntly does not refer to the fact that the apparent Filipino ownership of the corporation’s equity falls below the 60% threshold. Rather “doubt” refers to various indicia that the “beneficial ownership” and “control” of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders. As provided in DOJ Opinion No. 165, Series of 1984, which applied the pertinent provisions of the Anti-Dummy Law in relation to the minimum Filipino equity requirement in the constitution, “significant indicators of the dummy status” have been recognized in view of reports “that some Filipino investor or businessmen are being utilized or [are] allowing themselves to be used as dummies by foreign investors” specifically in joint ventures for national resource exploitation. These indicator are:

“1. That the foreign investors provide practically all the funds for the joint investment undertaken by these Filipino businessmen and their foreign partner;

“2. That the foreign investors undertake to provide practically all the technological support for the joint venture;

“3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies.” (Narra Nickel Mining and Development Corporation., G.R. No. 195580, January 28, 2015)

(Note: This question should have been asked in mercantile Law. I respectfully ask that answers featuring the foregoing discussion should be accepted as correct.)

Pursuant to its mandate to manage the orderly sale, disposition and privatization of the National Power Corporation's (NPC) generation assets, real estate and other disposable assets, the Power Sector Assets and Liabilities Management (PSALM) started the bidding process for the privatization of Angat Hydro Electric Power Plant ( AHEPP). After evaluation of the bids, K-Pop Energy Corporation, a South Korean Company, was the highest bidder. Consequently, a notice of award was issued to K-Pop. The Citizens' Party questioned the sale arguing that it violates the constitutional provisions on the appropriation and utilization of a natural resource which should be limited to Filipino citizens and corporations which are at least 60% Filipino-owned. The PSALM countered that only the hydroelectric facility is being sold and not the Angat Dam; and that the utilization of water by a hydroelectric power plant does not constitute appropriation of water from its natural source of water that enters the intake gate of the power plant which is an artificial structure. Whose claim is correct? Explain. ( 4%) (2015 BAR EXAMS)

- C. Exploration, development and utilization of natural resources
  - D. Franchises, authority and certificates for public utilities
  - E. Acquisition, ownership and transfer of public and private lands
  - F. Practice of professions
  - G. Organization and regulation of corporations, private and public
  - H. Monopolies, restraint of trade and unfair competition
- XIV. Social Justice and Human Rights
- A. Concept of social justice
  - B. Commission on Human Rights
- XV. Education, Science, Technology, Arts, Culture and Sports
- A. Academic freedom

**2012 BAR EXAMS**

Academic freedom shall be enjoyed:

- a. in all public institutions;
- b. in all elementary and high schools;
- c. in all schools;
- d. in all institutions of higher learning.**

**SUGGESTED ANSWER:**

(D) SECTION 5(2), ARTICLE XIV OF CONSTITUTION

**2013 BAR EXAMS**

Bobby, an incoming third year college student, was denied admission by his university, a premiere educational institution in Manila, after he failed in three (3) major subjects in his sophomore year. The denial of admission was based on the university's rules and admission policies.

Unable to cope with the depression that his non-admission triggered, Bobby committed suicide. His family sued the school for damages, citing the school's grossly unreasonable rules that resulted in the denial of admission. They argued that these rules violated Bobby's human rights and the priority consideration that the Constitution gives to the education of the youth.

You are counsel for the university. Explain your arguments in support of the university's case. (6%)

**SUGGESTED ANSWER:**

I shall argue that under Article XIV, Section 5(2) of the 1987 Constitution, the educational institution enjoys academic freedom. Academic freedom includes its rights to prescribe academic standards, policies and qualifications for the admission of a student (University of San Agustin, Inc. v. Court of Appeals, G.R. No. 100588, March 7, 1994, 230 SCRA 761).

## **XVI. Public International Law**

### **A. Concepts**

#### **2012 BAR EXAMS**

This doctrine considers the general or customary norms of international law as a part of municipal law and are to be enforced as such, without regard as to whether they are enacted as statutory or legislative rules or not:

a. accession

**b. incorporation;**

c. accretion;

d. adoption.

#### **SUGGESTED ANSWER:**

(B) Magallona , Fundamentals Of Public International Law, P, 523

#### **2013 BAR EXAMS**

What is the legal effect of decisions of the International Court of Justice in cases submitted to it for resolution? (1%)

(A) The decision is binding on all other countries in similar situations.

(B) The decision is not binding on any country, even the countries that are parties to the case.

**(C) The decision is binding only on the parties but only with respect to that particular case.**

(D) The decision is not binding on the parties and is only advisory.

(E) The binding effect on the parties depends on their submission agreement.

#### **SUGGESTED ANSWER:**

(C)(Article 59 of the Statute of the International Court of Justice).

## 2012 BAR EXAMS

President Black of the Republic of Pasensya (RP) had a telephone conversation with President Blue of the People's Republic of Conquerors (PRC). In that conversation, both leaders agreed that they will both pull-out all their vessels, civilian or otherwise, sea crafts and other ships from the hotly disputed Kalmado Shoal area within eight (8) days in order to de-escalate the situation. After eight days, all RP ships and vessels have left the area. However, several military and civilian ships carrying the PRC flag remained in the area and began construction of a dock that could provide fuel and other supplies to vessels passing by.

- a. Assuming that President Black and President Blue both had full capacity to represent their states and negotiate with each other under their respective systems of government, and further assuming that both leaders acknowledge the existence of the conversation, is the verbal agreement via telephone binding under international law? Explain. (5%)
- b. Assuming the answer to (a.) is in affirmative, does that agreement constitute a Treaty under the 1969 Vienna Convention on the Law on Treaties? (2%)
- c. What are the sources of International Law? (2%)
- d. What is opinio juris in International Law? (1%)

### SUGGESTED ANSWER:

A. The Verbal Agreement By Telephone Is Binding Between The Parties On The Basis Of Customary International Law. (In 1992 The Dispute Between Denmark And Finland About The Construction Of A Bridge Was Settled By A Telephone Conversation Between The Danish And Finnish Prime Ministers. In Return For Payment By Denmark, Finland Agreed To Discontinue The Case It Filed. (Aust Modern Treaty Law And Practice, P,7.)

B. The Verbal Agreement Does Not Constitute A Treaty Under The Vienna Convention On The Law Of Treaties Article 3 Requires That For An International Agreement To Be A Treaty, It Must Be In Written Form.

C. The Following Are The Sources Of International Law;

1. International Conventions, Whether General Or Particular, Establishing Rules Expressly Recognized By The Contesting States;
2. International Custom As Evidence Of A General Practice Accepted As Law;

3. The General Principles Of Law Recognized By Civilized Nations.

D. To Establish Customary International Law, Two Elements Must Concur, General State Practice And Opinion Juris Sire Necessitates. State Practice Refers To The Continuous Repetition Of The Same Or Similar Kind Of Acts Or Norms By States. Opinio Juris Requires That The State Practice Or Norm Be Carried Out In Such A Way As To Be Evidence Of The Belief That It Is Obligatory By The Existence Of A Rule Of Law Requiring It. (Bayan Muna Vs. Romulo, 641 Scra 244.)

1. Obligations erga omnes
2. Jus cogens

### 2012 BAR EXAMS

In international law, it is a norm which States cannot derogate or deviate from their agreements:

- a. terra nullius;
- b. opiniojuris;
- c. jus cogens;**
- d. juscogentus.

### SUGGESTED ANSWER:

(C) Article 53 Of Vienna Convention On The Law Of Treaties

3. Concept of *ex aequo et bono*
- B. International and national law  
C. Sources

### 2012 BAR EXAMS

Under Article 38(1) of the Statute of the International Court of Justice, which one of the following is NOT considered a source of international law:

- a. international conventions;
- b. international custom;
- c. international humanitarian law;**

d. general principles of law.

**SUGGESTED ANSWER:**

(c) Article 38 of Statute of the International Court of Justice International Humanitarian Law is embodied in both Customary and Conventional International Law. (fleck, The Handbook Of International Humanitarian Law, 2<sup>nd</sup> ed., p. 11

D. Subjects

1. States

**2012 BAR EXAMS**

In international law, the status of an entity as a State is accepted by other States through this act. It is the "act by which another State acknowledges that the political entity recognized possesses the attributes of statehood."

a. accession;

**b. recognition;**

c. acknowledgment;

d. attribution.

**SUGGESTED ANSWER:**

(B) Brownlie, Principles Of Public International Law, 7<sup>th</sup> Ed., P.86

2. International organizations

3. Individuals

**(2013)**

B. What is the appropriate remedy available to the victim's family under international law? (3%)

**SUGGESTED ANSWER:**

The appropriate remedy available to the family of A is to seek diplomatic protection from Great Britain to press a claim for reparation. (Brownlie, Principles of Public International Law, 7th ed., pp. 460 and 477-478.) However, in order that the claim will be allowable under customary international law, the family of A must first exhaust the legal remedies available in Thailand. (Brownlie, Principles of Public International Law, 7th ed., p. 492.)

- E. Diplomatic and consular law
  - F. Treaties
  - G. Nationality and statelessness
    - 1. Vienna Convention on the Law of Treaties
  - H. State responsibility
    - 1. Doctrine of state responsibility
  - I. Jurisdiction of States
    - 1. Territoriality principle
    - 2. Nationality principle and statelessness
    - 3. Protective principle
    - 4. Universality principle
    - 5. Passive personality principle
  - 6. Conflicts of jurisdiction
- J. Treatment of aliens**
- 1. Extradition
    - a) Fundamental principles

## **2012 BAR EXAMS**

An act or process by which a State, in compliance with a formal demand or request, surrenders to another State an alleged offender or fugitive criminal who has sought refuge in the territory of the first State, in order to stand trial or complete his prison term:

- a. extramediation
- b. exterritoriality;
- c. extradition;
- d. extraterritoriality.

- b) Procedure
- c) Distinguished from deportation

## **K. International Human Rights Law**

- 1. Universal Declaration of Human Rights
- 2. International Covenant on Civil and Political Rights
- 3. International Covenant on Economic, Social and Cultural Rights

## **L. International Humanitarian Law and neutrality**

- 1. Categories of armed conflicts
  - a) International armed conflicts
  - b) Internal or non-international armed conflict
  - c) War of national liberation
- 2. Core international obligations of states in International Humanitarian Law
- 3. Principles of International Humanitarian Law
  - a) Treatment of civilians

- b) Prisoners of war
- 4. Law on neutrality
- M. Law of the sea
- 1. Baselines

### **2012 BAR EXAMS**

It is a line from which the breadth of the territorial sea and other maritime zones is measured:

- a. contiguous line;
- b. economic line;
- c. baseline;**
- d. archipelagic line.

#### **SUGGESTED ANSWER:**

(C) Articles 5, 6 And 7, Convention On The Law Of The Sea

### **2012 BAR EXAMS**

Under the United Nations Conference of the Law of the Sea (UNCLOS), the extent of the contiguous zone is:

- a. 3 nautical miles from the lowest water mark;
- b. 12 miles from the outer limits;
- c. 12 miles from the lowest water mark;**
- d. 200 miles from the outer limits.

#### **SUGGESTED ANSWER:**

(C) Article 3 And 5 Convention On The Law Of The Sea

(Note In The Statement Of The Problem, The Word "Conference" Should Read "Convention" None Of The Items In This Mcq Is Correct. Reference To Lowest Water Mark May Not Be Accurate Because This Applies Only To The Normal Baseline, Not To Straight Baseline. Reference To "Outer Limit" Is Misleading Because It Does Not Indicate The Maritime Zone Of Which It Is The Outer Limit, Such As The "Outer Limit Of The Territorial Sea")

- 2. Archipelagic states
- a) Straight archipelagic baselines

- b) Archipelagic waters
- c) Archipelagic sea lanes passage
- 3. Internal waters
- 4. Territorial sea

### **2012 BAR EXAMS**

It is a maritime zone adjacent to the territorial seas where the coastal state may exercise certain protective jurisdiction:

- a. baseline zone;
- b. contiguous zone;
- c. transit zone;**
- d. appurtenant zone.

### **SUGGESTED ANSWER:**

- (A) Article, Convention On The Law Of The Sea

- 5. Exclusive economic zone

### **2013 BAR EXAMS**

Under the UN Convention on the Law of the Sea, the exclusive economic zone refers to an area \_\_\_\_\_ . (1%)

(A) that is at least 100 miles from the baselines from which the outer limit of the territorial sea is measured

(B) that is at least 200 miles but not to exceed 300 miles from the baselines from which the outer limit of the territorial sea is measured

(C) beyond and adjacent to a country's territorial sea which cannot go beyond 200 nautical miles from the baselines from which the outer limit of the territorial sea is measured

(D) that can go beyond 3 nautical miles but cannot extend 300 nautical miles from the baselines from which the outer limit of the territorial sea is measured

**(E) none of the above.**

**SUGGESTED ANSWER:**

(E)None of the above.

(Note: The nearest to the accurate answer may be © but it proposes that the EEZ cannot go beyond 200 nautical miles “from the baseline from which the outer limit of the territorial sea is measured.”

This is not correct because the baseline is the point from which the entire Breadth of the territorial sea is measured pursuant to Article 57 of the UNCLOS, not only from its outer limit as indicated in Letter (C). Letter (C) excludes the entire breadth of the territorial sea of 12 n.m. from the EEZ contrary to the text of said Article 57.

If Letter (C) is followed, EEZ will only measure 200 n.m. minus 12 n.m. of the territorial sea, resulting in the EEZ measuring only 188 n.m. in breadth

6. **Continental shelf**

**a) Extended continental shelf**

7. **International Tribunal for the Law of the Sea**

**N. Madrid Protocol and the Paris Convention for the Protection of Industrial Property**

**O. International environmental law**

1. **Principle 21 of the Stockholm Declaration**

**P. International economic law**